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Date: March 24, 2006	Phone Number	Fax Number
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From: Kevin J. Zilka		

Docket No.: ABE1P003

App. No: 10/652,640

Total Number of Pages Being Transmitted, Including Cover Sheet: 118

Message:

Please deliver to the Board of Patent Appeals.

Thank you,

Kevin J. Zilka

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Practitioner's Docket No. ABE1P003

PATENT

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: John R. Abe

Application No.: 10/652,640

Group No.: 3639

Filed: 08/28/2003

Examiner: Woo, Richard S.

For: METHOD FOR SIMULATING AN OPTIMIZED SUPPLIER IN A MARKET

Mail Stop Appeal Briefs – Patents

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

TRANSMITTAL OF APPEAL BRIEF  
(PATENT APPLICATION—37 C.F.R. § 41.37)

1. Transmitted herewith, is the APPEAL BRIEF in this application, with respect to the Notice of Appeal filed on October 25, 2005.

2. STATUS OF APPLICANT

This application is on behalf of a small entity. A statement was already filed.

## CERTIFICATION UNDER 37 C.F.R. §§ 1.8(a) and 1.10\*

(When using Express Mail, the Express Mail label number is mandatory;  
Express Mail certification is optional.)

I hereby certify that, on the date shown below, this correspondence is being:

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37 C.F.R. § 1.10\*

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3/24/2006

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Erica L. Farlow

(type or print name of person certifying)

\* Only the date of filing (' 1.6) will be the date used in a patent term adjustment calculation, although the date on any certificate of mailing or transmission under ' 1.8 continues to be taken into account in determining timeliness. See ' 1.703(f). Consider "Express Mail Post Office to Addressee" (' 1.10) or facsimile transmission (' 1.6(d)) for the reply to be accorded the earliest possible filing date for patent term adjustment calculations.

Transmittal of Appeal Brief—page 1 of 2

MAR 24 2006

## 3. FEE FOR FILING APPEAL BRIEF

Pursuant to 37 C.F.R. § 41.20(b)(2), the fee for filing the Appeal Brief is:

small entity \$250.00

**Appeal Brief fee due \$250.00**

## 4. EXTENSION OF TERM

The proceedings herein are for a patent application and the provisions of 37 C.F.R. § 1.136 apply.

Applicant petitions for an extension of time under 37 C.F.R. § 1.136 (fees: 37 C.F.R. § 1.17(a)(1)-(5)) for three months:

Fee: \$510.00

If an additional extension of time is required, please consider this a petition therefor.

Applicant believes that no extension of term is required. However, this conditional petition is being made to provide for the possibility that applicant has inadvertently overlooked the need for a petition and fee for extension of time.

## 5. TOTAL FEE DUE

The total fee due is:

Appeal brief fee \$250.00  
Extension fee (if any) \$510.00

**TOTAL FEE DUE \$760.00**

## 6. FEE PAYMENT

Authorization is hereby made to charge the amount of \$760.00 to Deposit Account No. 50-1351 (Order No. ABE1P003).

A duplicate of this transmittal is attached.

## 7. FEE DEFICIENCY

If any additional extension and/or fee is required, and if any additional fee for claims is required, charge Deposit Account No. 50-1351 (Order No. ABE1P003).

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Signature of Practitioner  
Kevin J. Zilka  
Zilka-Kotab, PC  
P.O. Box 721120  
San Jose, CA 95172-1120  
USA

Transmittal of Appeal Brief—page 2 of 2

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MAR 24 2006

- 1 -

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: )  
 )  
John R. Abe ) Group Art Unit: 3639  
 )  
Application No. 10/652,640 ) Examiner: Woo, Richard Sukyoon  
 )  
Filed: August 28, 2003 ) Date: March 24, 2006  
 )  
For: A METHOD FOR SIMULATING AN )  
OPTIMIZED SUPPLIER IN A MARKET )  
 )  
 )  
 )

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**ATTENTION: Board of Patent Appeals and Interferences**

**APPEAL BRIEF (37 C.F.R. § 41.37)**

This brief is in furtherance of the Notice of Appeal, filed in this case on October 25, 2005.

The fees required under § 1.17, and any required petition for extension of time for filing this brief and fees therefor, are dealt with in the accompanying TRANSMITTAL OF APPEAL BRIEF.

This brief contains these items under the following headings, and in the order set forth below (37 C.F.R. § 41.37(c)(i)):

- I REAL PARTY IN INTEREST
- II RELATED APPEALS AND INTERFERENCES
- III STATUS OF CLAIMS
- IV STATUS OF AMENDMENTS
- V SUMMARY OF CLAIMED SUBJECT MATTER
- VI ISSUES
- VII ARGUMENTS

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VIII APPENDIX OF CLAIMS INVOLVED IN THE APPEAL

IX APPENDIX LISTING ANY EVIDENCE RELIED ON BY APPELLANT IN THE APPEAL

X RELATED PROCEEDING APPENDIX

The final page of this brief bears the practitioner's signature.

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**I REAL PARTY IN INTEREST (37 C.F.R. § 41.37(c)(1)(i))**

The real party in interest in this appeal is John R. Abe.

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## **II RELATED APPEALS AND INTERFERENCES (37 C.F.R. § 41.37(c) (1)(ii))**

With respect to other prior or pending appeals, interferences, or related judicial proceedings that will directly affect, or be directly affected by, or have a bearing on the Board's decision in the pending appeal, below is a list of such appeals, interferences, or related judicial proceedings.

App. Serial No.: 10/644,949, Filed 08/13/03

App. Serial No.: 10/644,944, Filed 08/13/03

A Related Proceedings Appendix is appended hereto.

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**III STATUS OF CLAIMS (37 C.F.R. § 41.37(c) (1)(iii))**

**A. TOTAL NUMBER OF CLAIMS IN APPLICATION**

Claims in the application are: 1-5 and 15-37

**B. STATUS OF ALL THE CLAIMS IN APPLICATION**

1. Claims withdrawn from consideration: None
2. Claims pending: 1-5 and 15-37
3. Claims allowed: None
4. Claims rejected: 1-5 and 15-37
5. Claims cancelled: 6-14

**C. CLAIMS ON APPEAL**

The claims on appeal are: 1-5 and 15-37

See additional status information in the Appendix of Claims.



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**IV STATUS OF AMENDMENTS (37 C.F.R. § 41.37(c)(1)(iv))**

As to the status of any amendment filed subsequent to final rejection, there is no amendment after final.

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**V SUMMARY OF CLAIMED SUBJECT MATTER (37 C.F.R. § 41.37(c)(1)(v))**

With respect to a summary of Claims 1, 17 and 18, as shown in Figures 1-4, a system, method and computer program product are provided for optimal price simulation. In use, a price-frequency mathematical distribution of prices associated with at least one non-optimized supplier is received via an input device of the computer system (e.g. items 302-324 of Figure 3), and the distribution of prices are stored in memory of a computer system. Also received via the input device of the computer system are a number of competitors, a business objective, and a cost associated with a good or service (e.g. items 410, 414 and 416 of Figure 4), and the number of competitors, business objective, and cost associated with the good or service are stored in the memory of the computer system. A set of non-optimized prices are produced based on the distribution of prices, by selecting at least one non-optimized price for each competitor from the distribution of prices, utilizing a processor of the computer system. In addition, an optimal price is calculated based on the selected non-optimized prices, number of competitors, business objective, and cost associated with the good or service, wherein the business objective is selected from the group consisting of maximizing revenue for the good or service, maximizing gross profit for the good or service, maximizing factory utilization for the good or service, maximizing market share for the good or service, and maximizing earnings before income tax (EBIT) for the good or service, utilizing the processor of the computer system. The calculated optimal price for accomplishing the business objective is then displayed via an output device of the computer system. Further, the optimal price is simulated to generate an updated optimal price by identifying a result of utilizing the optimal price, where the result is stored, and a search is performed for the updated optimal price that optimizes a user-selected business objective selected from the group consisting of maximizing revenue for the good or service, maximizing gross profit for the good or service, maximizing factory utilization for the good or service, maximizing market share for the good or service, and maximizing earnings before interest and tax (EBIT) for the good or service, utilizing the processor of the computer system. Still yet, the result includes an expected result, the expected result is compared with an actual result, it is determined whether an optimization is required based on the comparison, and if it is determined that the optimization is required, the updated optimal price is identified. Even still yet, the updated optimal price is displayed via the output device of the computer system for further

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accomplishing the business objective. See page 14-16, for example.

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**VI ISSUES (37 C.F.R. § 41.37(c)(1)(vi))**

Following, under each issue listed, is a concise statement setting forth the corresponding ground of rejection.

Issue # 1: The Examiner has rejected Claims 17 and 18 under 35 U.S.C. 101 as being directed toward non-statutory subject matter.

Issue # 2: The Examiner has rejected Claims 1-5, 15-25 and 29-31 under 35 U.S.C. 102(b) as being anticipated by Reuhl et al. (U.S. Patent No. 5,873,069).

Issue # 3: The Examiner has rejected Claims 26-28 and 32-37 under 35 U.S.C. 103(a) as being unpatentable over Reuhl et al. (U.S. Patent No. 5,873,069).

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**VII ARGUMENTS (37 C.F.R. § 41.37(c)(1)(vii))**

The claims of the groups noted below do not stand or fall together. In the present section, appellant explains why the claims of each group are believed to be separately patentable.

Issue # 1:

The Examiner has rejected Claims 17 and 18 under 35 U.S.C. 101 as being directed toward non-statutory subject matter. Appellant respectfully disagrees with such rejection. Such claims clearly require a "system" and a "computer program product embodied on a computer readable medium," respectively.

Issue # 2:

The Examiner has rejected Claims 1-5, 15-25 and 29-31 under 35 U.S.C. 102(b) as being anticipated by Reuhl et al. (U.S. Patent No. 5,873,069).

*Group #1: Claims 1-5, and 17-21*

With respect to each of the independent claims, the Examiner has relied on Figures 5, 6, 8, 15A-15C, 17-35, and col. 3, line 5- col.4 line 56 to make a prior art showing of appellant's claimed "receiving via an input device of the computer system a price frequency mathematical distribution of prices associated with at least one non-optimized supplier."

Appellant respectfully asserts that there is no disclosure in Reuhl that meets the specific claim language. Specifically, Reuhl fails to specifically mention price frequency mathematical distribution of prices. Appellant notes that simply none of the Figures relied on by the Examiner even suggest a "price frequency mathematical distribution of prices," let alone where such distribution of prices is "associated with at least one non-optimized supplier," as specifically claimed by appellant. Further, simply nowhere in Col. 3, line 5-Col. 4, line 56 is there any disclosure of such specific claim language. Reuhl makes no reference to anything that can be construed as a price frequency mathematical distribution. Therefore, appellant fails to find any disclosure of "receiving a price

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frequency mathematical distribution of prices associated with at least one non-optimized supplier,” as claimed.

Still with respect to each of the independent claims, the Examiner has used Figure 5 to make a prior art showing of appellant’s claimed “storing the distribution of prices in the memory of the computer system.” Appellant respectfully points out to the Examiner that “storing the distribution of prices” refers specifically to the price frequency distribution of prices and should not be misconstrued as a list of prices or a “price frequency change pattern,” as articulated by Reuhl.

Still yet, with respect to each of the independent claims, the Examiner has relied on the foregoing cited Figures and col. 3 line 5-col. 4 line 56 to make a prior art showing of appellant’s claimed “receiving via the input device of the computer system a number of competitors, a business objective, and a cost associated with a good or service” and “storing the number of competitors, business objective, and cost associated with the good or service in the memory of the computer system.” Appellant respectfully asserts that Reuhl does not teach a “business objective” either directly or indirectly in the Figures reference by the Examiner, or in the text contained in col. 3 line 5-col. 4, line 56.

Moreover, with respect to each of the independent claims, the Examiner has relied on the foregoing cited Figures, and specifically Figures 15A-15C and 17-35 to make a prior art showing of appellant’s claimed technique “wherein the business objective is selected from the group consisting of maximizing revenue for a good or service, maximizing gross profit for the good or service, maximizing factory utilization for the good or service, maximizing market share for the good or service, and maximizing earnings before income tax (EBIT) for the good or service.” As noted above, Reuhl does not teach a “business objective,” and therefore Reuhl cannot meet appellant’s specific claim language.

Also with respect to each of the independent claims, the Examiner has relied on the foregoing cited figures and references in Reuhl to make a prior art showing of appellant’s claimed “calculating an optimal price based on the selected non-optimized prices, number of competitors, business objective, and cost associated with the good or service” and “displaying via an output device of the computer system the calculated optimal price for accomplishing the business objective.”

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Appellant respectfully points out to the Examiner that Reuhl fails to teach the computation or calculation of any sort of optimal price based on a business objective. As argued above, Reuhl does not make reference to an optimal price, business objective, or specifically the formation of a business objective with respect to revenue, profits, or any other terms, in the specific manner claimed by appellant. In the absence of an objective, it is not possible for Reuhl to calculate, compute, or display an optimal price, as claimed.

The Examiner is reminded that a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. Of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Moreover, the identical invention must be shown in as complete detail as contained in the claim. *Richardson v. Suzuki Motor Co.* 868 F.2d 1226, 1236, 9USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claim.

This criterion has simply not been met by the Reuhl reference, for at least the reasons noted above.

*Group #2: Claim 15*

With respect to dependent Claim 15, the Examiner has relied on Figures 2 of Reuhl to make a prior art showing of appellant's claimed technique "wherein the method is performed by a plurality of components including a frequency distribution engine, a probability of win engine, an expected results engine, an optimization update engine, a bid engine, a market place engine, and a financial accumulator engine."

Appellant respectfully points out to the Examiner Reuhl does not teach a frequency distribution engine, a probability of win engine, an expected results engine, an optimization update engine, a bid engine, a market place engine, or a financial accumulator engine in the figures or text. Appellant respectfully asserts that the Reuhl reference simply fails to meet all of appellant's claim language, as noted above.

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*Group #3: Claim 16*

With respect to dependent Claim 16, the Examiner has relied on Figures 2 of Reuhl to make a prior art showing of appellant's claimed technique "wherein the method is performed by a plurality of components selected from the group of a frequency distribution engine, a probability of win engine, an expected results engine, an optimization update engine, a bid engine, a market place engine, and a financial accumulator engine."

Appellant respectfully points out to the Examiner Reuhl does not teach a frequency distribution engine, a probability of win engine, an expected results engine, an optimization update engine, a bid engine, a market place engine, or a financial accumulator engine in the figures or text. Again, Appellant respectfully asserts that the Reuhl reference simply fails to meet all of appellant's claim language, as noted above.

*Group #4: Claim 22*

With respect to dependent Claim 22, the Examiner has relied on Figures 15A-15C and 17-35 of Reuhl to make a prior art showing of appellant's claimed technique "wherein the price-frequency mathematical distribution is used to estimate the set of the competitor prices."

Appellant respectfully calls to the attention of the Examiner that Reuhl fails to teach the use of a price-frequency mathematical distribution of prices (see Group #1). In addition, Reuhl does not teach how the price frequency distribution can be used to estimate the set of the competitor prices, as claimed. Appellant respectfully asserts that the Reuhl reference simply fails to meet all of appellant's claim language, as noted above.

*Group #5: Claim 23*

With respect to dependent Claim 23, the Examiner has relied on Figures 15A-15C and 17-35 of Reuhl to make a prior art showing of appellant's claimed technique "wherein the price-frequency mathematical distribution is estimated using the set of competitor prices."



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Appellant respectfully calls to the attention of the Examiner that Reuhl fails to teach the use of a price-frequency mathematical distribution of prices (see Group #1). In addition, Reuhl does not teach how the price frequency distribution can be estimated from the set of competitor prices, as claimed. Again, appellant respectfully asserts that the Reuhl reference simply fails to meet all of appellant's claim language, as noted above.

*Group #6: Claim 24*

With respect to dependent Claim 24, the Examiner has relied on Figures 15A-15C and 17-35 of Reuhl to make a prior art showing of appellant's claimed technique "wherein the price-frequency mathematical distribution is converted to an expected probability of a customer purchase based on the number of competitors."

Appellant respectfully calls to the attention of the Examiner that Reuhl fails to teach the use of a price-frequency mathematical distribution of prices (see Group #1). In addition, Reuhl does not teach that a frequency distribution of prices has an associated probability of customer purchase. In fact, Reuhl does not teach the relationship of the probability of customer purchase and price. Again, appellant respectfully asserts that the Reuhl reference simply fails to meet all of appellant's claim language, as noted above.

*Group #7: Claim 25*

With respect to dependent Claim 25, the Examiner has relied on Figures 15A-15C and 17-35 of Reuhl to make a prior art showing of appellant's claimed technique "wherein the price-frequency mathematical distribution is converted to a table of prices with a frequency of a price within the table corresponding to the price-frequency mathematical distribution."

Appellant respectfully calls to the attention of the Examiner that Reuhl fails to teach the use of a price-frequency mathematical distribution of prices (see Group #1). In addition, Reuhl does not teach how the price frequency distribution is converted to a table of prices with a frequency of a price within the table corresponding to the price-frequency mathematical distribution, as

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claimed. Again, appellant respectfully asserts that the Reuhl reference simply fails to meet all of appellant's claim language, as noted above.

*Group #8: Claim 29*

With respect to dependent Claim 29, the Examiner has relied on Figures 15A-15C and 17-35 of Reuhl to make a prior art showing of appellant's claimed technique "wherein a maximum revenue value and a maximum profit value are identified along with corresponding prices."

Appellant respectfully raises the following argument to the Examiner. Reuhl does not teach the relationship of maximum revenue value or maximum profit value to the corresponding prices. The Examiner is encouraged to recognize that heuristic rules should not be construed to be equivalent to a computational process that mathematically identifies the prices corresponding to the maximum revenue value and maximum profit value.

Appellant respectfully asserts that the Reuhl reference simply fails to meet all of appellant's claim language, as noted above.

*Group #9: Claim 30*

With respect to dependent Claim 30, the Examiner has relied on Figures 15A-15C and 17-35 of Reuhl to make a prior art showing of appellant's claimed technique "wherein a probability of a customer purchase is determined for the optimal price."

Appellant respectfully raises the following argument to the Examiner. Reuhl does not teach the computation of optimal price or the association of a probability of purchase with regards to price. The Examiner is encouraged to recognize that heuristic rules should not be construed to be equivalent to a computational process that mathematically identifies the prices corresponding to the maximum revenue value and maximum profit value.

Again, Appellant respectfully asserts that the Reuhl reference simply fails to meet all of appellant's claim language, as noted above.

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*Group #10: Claim 31*

With respect to dependent Claim 31, the Examiner has relied on Figures 15A-15C and 17-35 of Reuhl to make a prior art showing of appellant's claimed technique "wherein a number of selected prices corresponding to the number of competitors is chosen, where the selection of the prices is performed in a random manner."

Appellant respectfully raises the point that Reuhl does not make any disclosure regarding the random selection of prices corresponding to the number of competitors.

Again, Appellant respectfully asserts that the Reuhl reference simply fails to meet all of appellant's claim language, as noted above.

Issue # 3:

The Examiner has rejected Claims 26-28 and 32-37 under 35 U.S.C. 103(a) as being unpatentable over Reuhl et al. (U.S. Patent No. 5,873,069).

*Group #1: Claim 26*

With respect to Claim 26, the Examiner states that "it would have been an obvious matter of design choice to a person of ordinary skill in the art to modify Reuhl et al, such that each price, probability of a customer purchase, and cost-per-unit are used to form a partial income statement for each member of the plurality of prices."

Appellant respectfully, but strongly disagrees with the Examiner. Reuhl does not teach about the relationship of customer purchase probability and price. In fact, the Reuhl makes no mention of the likelihood of customer purchase at a given price and therefore could not possibly teach [nor does Reuhl teach] the formation of a partial income statement associated with each member of a plurality of prices. In contrast, appellant teaches and claims a computational method of deriving a partial income statement associated with each member of a plurality of prices, as well as that

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the partial income statement is comprised of financial terms including revenue, cost of goods and gross profit.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on appellant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed.Cir.1991).

Appellant thus respectfully asserts that at least the third element of the *prima facie* case of obviousness has not been met, since the prior art references, when combined, fail to teach or suggest all of the claim limitations, as noted above.

*Group #2: Claim 27*

With respect to Claim 27, the Examiner states that "it would have been an obvious matter of design choice to a person of ordinary skill in the art to modify Reuhl et al, such that... each partial income statement is comprised of financial terms including revenue, cost of goods and gross profit."

Appellant again respectfully, but strongly disagrees with the Examiner. Reuhl does not teach about the relationship of customer purchase probability and price. In fact, the Reuhl makes no mention of the likelihood of customer purchase at a given price and therefore could not possibly teach [nor does Reuhl teach] the formation of a partial income statement associated with each member of a plurality of prices. In contrast, appellant teaches and claims a computational method of deriving a partial income statement associated with each member of a plurality of prices, as well as that the partial income statement is comprised of financial terms including revenue, cost of goods and gross profit.

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In addition, appellant yet again strongly, but again respectfully disagrees with the Examiner's argument that appellant has not disclosed that utilizing the partial income statement is used for a particular purpose, or solves a stated problem. Appellant identifies how the partial income statement is formed in claim 26, in claim 27 the composition of the income statement is identified to include revenue and gross profit, and claim 29 identifies where the maximum revenue and gross profit values are selected from. Therefore, the use of the partial income statements is to identify the maximum revenue and gross profit values.

Appellant again respectfully asserts that at least the third element of the *prima facie* case of obviousness has not been met, since the prior art references, when combined, fail to teach or suggest all of the claim limitations, as noted above.

*Group #3: Claim 28*

With respect to Claim 28, the Examiner states that "it would have been an obvious matter of design choice to a person of ordinary skill in the art to modify Reuhl et al, such that... a set of the partial income statements are stored."

Appellant respectfully, but strongly disagrees with the Examiner. Reuhl does not teach about the relationship of customer purchase probability and price. In fact, the Reuhl makes no mention of the likelihood of customer purchase at a given price and therefore could not possibly teach [nor does Reuhl teach] the formation of a partial income statement associated with each member of a plurality of prices. In contrast, appellant teaches a computational method of deriving a partial income statement associated with each member of a plurality of prices, as well as that the partial income statement is comprised of financial terms including revenue, cost of goods and gross profit.

In addition, appellant strongly, but again respectfully disagrees with the Examiner's argument that appellant has not disclosed that utilizing the partial income statement is used for a particular purpose, or solves a stated problem. Appellant identifies how the partial income statement is formed in claim 26, in claim 27 the composition of the income statement is identified to include revenue and gross profit, and claim 29 identifies where the maximum revenue and gross profit

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values are selected from. Therefore the use of the partial income statements is to identify the maximum revenue and gross profit values.

Appellant again respectfully asserts that at least the third element of the *prima facie* case of obviousness has not been met, since the prior art references, when combined, fail to teach or suggest all of the claim limitations, as noted above.

*Group #4: Claims 32-37*

Appellant respectfully asserts that the subject matter of such claims is deemed novel in view of the arguments made hereinabove with respect to Issue #2, Group #10.

Appellant again respectfully asserts that at least the third element of the *prima facie* case of obviousness has not been met, since the prior art references, when combined, fail to teach or suggest all of the claim limitations, as noted above.

In view of the remarks set forth hereinabove, all of the independent claims are deemed allowable, along with any claims depending therefrom.

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**VIII APPENDIX OF CLAIMS (37 C.F.R. § 41.37(c)(1)(viii))**

The text of the claims involved in the appeal (along with associated status information) is set forth below:

1. (Previously Presented) A method performed utilizing a computer system, the method comprising:
  - receiving via an input device of the computer system a price-frequency mathematical distribution of prices associated with at least one non-optimized supplier;
  - storing the distribution of prices in memory of the computer system;
  - receiving via the input device of the computer system a number of competitors, a business objective, and a cost associated with a good or service;
  - storing the number of competitors, business objective, and cost associated with the good or service in the memory of the computer system;
  - producing a set of non-optimized prices based on the distribution of prices, by selecting at least one non-optimized price for each competitor from the distribution of prices, utilizing a processor of the computer system;
  - calculating an optimal price based on the selected non-optimized prices, number of competitors, business objective, and cost associated with the good or service, wherein the business objective is selected from the group consisting of maximizing revenue for the good or service, maximizing gross profit for the good or service, maximizing factory utilization for the good or service, maximizing market share for the good or service, and maximizing earnings before income tax (EBIT) for the good or service, utilizing the processor of the computer system;
  - displaying via an output device of the computer system the calculated optimal price for accomplishing the business objective;
  - simulating the optimal price to generate an updated optimal price by identifying a result of utilizing the optimal price, where the result is stored, and a search is performed for the updated optimal price that optimizes a user-selected business objective selected from the group consisting of maximizing revenue for the good or service, maximizing gross profit for the good or service, maximizing factory utilization for the good or service, maximizing market share for the good or service, and maximizing earnings

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before interest and tax (EBIT) for the good or service, utilizing the processor of the computer system,

where

- a) the result includes an expected result,
- b) the expected result is compared with an actual result,
- c) it is determined whether an optimization is required based on the comparison, and

d) if it is determined that the optimization is required, the updated optimal price is identified; and

displaying via the output device of the computer system the updated optimal price for further accomplishing the business objective.

2. (Original) A method as recited in claim 1, and further comprising receiving a plurality of sets of one or more prices.

3. (Original) A method as recited in claim 2, wherein the sets of one or more prices are customizable.

4. (Original) A method as recited in claim 2, and further comprising comparing the sets of one or more prices.

5. (Original) A method as recited in claim 4, and further comprising reporting on the comparison.

6. – 14. (Cancelled)

15. (Original) A method as recited in claim 1, wherein the method is performed by a plurality of components including a frequency distribution engine, a probability of win engine, an expected results engine, an optimization update engine, a bid engine, a market place engine, and a financial accumulator engine.



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16. (Original) A method as recited in claim 1, wherein the method is performed by a plurality of components selected from the group of a frequency distribution engine, a probability of win engine, an expected results engine, an optimization update engine, a bid engine, a market place engine, and a financial accumulator engine.

17. (Previously Presented) An optimal price simulator system, comprising:

- logic for receiving via an input device of the computer system a price-frequency mathematical distribution of prices associated with at least one non-optimized supplier;

- logic for storing the distribution of prices in memory of the computer system;

- logic for receiving via the input device of the computer system a number of competitors, a business objective, and a cost associated with a good or service;

- logic for storing the number of competitors, business objective, and cost associated with the good or service in the memory of the computer system;

- logic for producing a set of non-optimized prices based on the distribution of prices, by selecting at least one non-optimized price for each competitor from the distribution of prices, utilizing a processor of the computer system;

- logic for calculating an optimal price based on the selected non-optimized prices, number of competitors, business objective, and cost associated with the good or service, wherein the business objective is selected from the group consisting of maximizing revenue for the good or service, maximizing gross profit for the good or service, maximizing factory utilization for the good or service, maximizing market share for the good or service, and maximizing earnings before income tax (EBIT) for the good or service, utilizing the processor of the computer system;

- logic for displaying via an output device of the computer system the calculated optimal price for accomplishing the business objective;

- logic for simulating the optimal price to generate an updated optimal price by identifying a result of utilizing the optimal price, where the result is stored, and a search is performed for the updated optimal price that optimizes a user-selected business objective selected from the group consisting of maximizing revenue for the good or service, maximizing gross profit for the good or service, maximizing factory utilization for the good or service, maximizing market share for the good or service, and maximizing

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earnings before interest and tax (EBIT) for the good or service, utilizing the processor of the computer system,

where

- a) the result includes an expected result,
  - b) the expected result is compared with an actual result,
  - c) it is determined whether an optimization is required based on the comparison, and
  - d) if it is determined that the optimization is required, the updated optimal price is identified; and
- logic for displaying via the output device of the computer system the updated optimal price for further accomplishing the business objective.

18. (Previously Presented) A computer program product embodied on a computer readable medium, comprising:

computer code for receiving via an input device of the computer system a price-frequency mathematical distribution of prices associated with at least one non-optimized supplier;

computer code for storing the distribution of prices in memory of the computer system;

computer code for receiving via the input device of the computer system a number of competitors, a business objective, and a cost associated with a good or service;

computer code for storing the number of competitors, business objective, and cost associated with the good or service in the memory of the computer system;

computer code for producing a set of non-optimized prices based on the distribution of prices, by selecting at least one non-optimized price for each competitor from the distribution of prices, utilizing a processor of the computer system;

computer code for calculating an optimal price based on the selected non-optimized prices, number of competitors, business objective, and cost associated with the good or service, wherein the business objective is selected from the group consisting of maximizing revenue for the good or service, maximizing gross profit for the good or service, maximizing factory utilization for the good or service, maximizing market share

- 24 -

for the good or service, and maximizing earnings before income tax (EBIT) for the good or service, utilizing the processor of the computer system;

computer code for displaying via an output device of the computer system the calculated optimal price for accomplishing the business objective;

computer code for simulating the optimal price to generate an updated optimal price by identifying a result of utilizing the optimal price, where the result is stored, and a search is performed for the updated optimal price that optimizes a user-selected business objective selected from the group consisting of maximizing revenue for the good or service, maximizing gross profit for the good or service, maximizing factory utilization for the good or service, maximizing market share for the good or service, and maximizing earnings before interest and tax (EBIT) for the good or service, utilizing the processor of the computer system,

where

- a) the result includes an expected result,
- b) the expected result is compared with an actual result,
- c) it is determined whether an optimization is required based on the comparison, and
- d) if it is determined that the optimization is required, the updated optimal price is identified; and

computer code for displaying via the output device of the computer system the updated optimal price for further accomplishing the business objective.

19. (Previously Presented) A method as recited in claim 1, wherein a graphical user interface is included for inputting a set of the competitor prices and the number of competitors.

20. (Previously Presented) A method as recited in claim 19, wherein the graphical user interface is adapted for inputting the business objective.

21. (Previously Presented) A method as recited in claim 19, wherein a graphical user interface is included for inputting a value for a cost-per-unit, an error rate, and an optimization update.

- 25 -

22. (Currently Amended) A method as recited in claim 21, wherein the price-frequency mathematical distribution is used to estimate the set of the competitor prices.
23. (Previously Presented) The method as described in claim 22, wherein the price-frequency mathematical distribution is estimated using the set of competitor prices.
24. (Previously Presented) The method as described in claim 22, wherein the price-frequency mathematical distribution is converted to an expected probability of a customer purchase based on the number of competitors.
25. (Previously Presented) A method as recited in claim 22, wherein the price-frequency mathematical distribution is converted to a table of prices with a frequency of a price within the table corresponding to the price-frequency mathematical distribution.
26. (Previously Presented) A method as recited in claim 25, wherein each price, probability of a customer purchase, and cost-per-unit are used to form a partial income statement for each member of the plurality of prices.
27. (Previously Presented) A method as recited in claim 26, wherein each partial income statement is comprised of financial terms including revenue, cost-of-goods, and gross profit.
28. (Previously Presented) A method as recited in claim 27, wherein a set of the partial income statements are stored within a table.
29. (Previously Presented) A method as recited in claim 1, wherein a maximum revenue value and a maximum profit value are identified along with corresponding prices.
30. (Previously Presented) The method as described in claim 1, wherein a probability of a customer purchase is determined for the optimal price.

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31. (Currently Amended) A method as recited in claim 1, wherein a number of selected prices corresponding to the number of competitors is chosen, where the selection of the prices is performed in a random manner.

32. (Previously Presented) The method as described in claim 31, wherein a lowest price in a set of prices is identified as a winning bid along with a corresponding supplier, the lowest price including the number of randomly selected prices and the optimal price.

33. (Previously Presented) The method as described in claim 32, wherein the winning bid and the probability of a customer purchase is added to an actual results table comprising of fields identifying a winning supplier, lowest price, cost-per-unit, gross profit, probability of a customer purchase, and actual winrate.

34. (Previously Presented) The method as described in claims 33, wherein a value for competition is calculated by summing each event of randomly selecting a set of prices corresponding to the number of competitors.

35. (Previously Presented) A method as recited in claim 34, wherein a value is calculated representing a sum of wins corresponding to the supplier.

36. (Previously Presented) The method as described in claim 35, wherein the actual winrate is calculated by dividing the sum of wins by the value for competition.

37. (Previously Presented) The method as described in claim 36, wherein if a condition where the value for competition is equal to or greater than an optimization update window value, and the actual winrate is greater than the expected probability of a customer purchase plus a tolerable error window value, or the actual winrate is less than the probability of a customer purchase minus the tolerable error window value, then the price-frequency mathematical distribution is adjusted so that a new expected probability of a customer purchase is equal to the actual winrate, and recorded values of wins and competition are set to zero.

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**IX APPENDIX LISTING ANY EVIDENCE RELIED ON BY APPELLANT IN THE  
APPEAL (37 C.F.R. § 41.37(c)(1)(ix))**

There is no such evidence.

- 28 -

**X RELATED PROCEEDING APPENDIX (37 C.F.R. § 41.37(c)(1)(x))**

See following pages.

- 29 -

In the event a telephone conversation would expedite the prosecution of this application, the Examiner may reach the undersigned at (408) 971-2573. For payment of any additional fees due in connection with the filing of this paper, the Commissioner is authorized to charge such fees to Deposit Account No. 50-1351 (Order No. ABEP003).

Respectfully submitted,

By: \_\_\_\_\_

Kevin J. Zilka

Reg. No. 41,429

Date: \_\_\_\_\_

3/24/06

Zilka-Kotab, P.C.

P.O. Box 721120

San Jose, California 95172-1120

Telephone: (408) 971-2573

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App. No:10/644,949

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Practitioner's Docket No. ABE1P001

PATENT

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: John R. Abe

Application No.: 10/644,949

Group No.: 3639

Filed: August 19, 2003

Examiner: Woo, R.

For: SYSTEM, METHOD AND COMPUTER PROGRAM PRODUCT FOR THE OPTIMIZATION  
OF PRICE TO SATISFY CERTAIN BUSINESS OBJECTIVES

Mail Stop AF

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

NOTICE OF APPEAL FROM THE PRIMARY EXAMINER  
TO THE BOARD OF PATENT APPEALS AND INTERFERENCES  
(37 C.F.R. § 41.31)

Applicant hereby appeals to the Board from the decision of the Primary Examiner, mailed June 7, 2005, for a second time rejecting claims 1-8, 13-15, 17, and 19-36.

## 1. STATUS OF APPLICANT

This application is on behalf of a small entity. Small Entity Status was requested at the time of filing.

## CERTIFICATION UNDER 37 C.F.R. § 1.8(a) and 1.10\*

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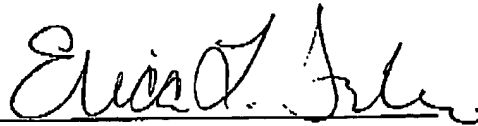
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Notice of Appeal from the Primary Examiner to Board—page 1 of 2

**2. FEE FOR FILING NOTICE OF APPEAL**

Pursuant to 37 C.F.R. § 41.20(b)(1), the fee for filing the Appeal Brief is:

Small entity	\$250.00
Notice of Appeal fee due	\$250.00

**3. EXTENSION OF TERM**

The proceedings herein are for a patent application and the provisions of 37 C.F.R. 1.136 apply.

Applicant believes that no extension of term is required. However, this conditional petition is being made to provide for the possibility that applicant has inadvertently overlooked the need for a petition and fee for extension of time.

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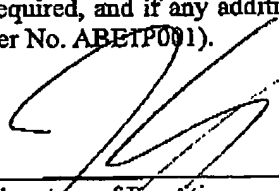
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Kevin J. Zilka  
Zilka-Kotab, PC  
P.O. Box 721120  
San Jose, CA 95172-1120  
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Notice of Appeal from the Primary Examiner to Board—page 2 of 2

Practitioner's Docket No. ABE1P001

PATENT

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In re application of: John R. Abe

Application No.: 10/644,949

Group No.: 3639

Filed: August 19, 2003

Examiner: Woo, R.

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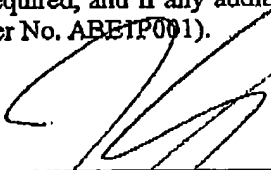
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January 12, 2006

Practitioner's Docket No. ABE1P001

PATENT

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: John R. Abe

Application No.: 10/644,949

Group No.: 3639

Filed: 08/19/2003

Examiner: Woo, R.

For: SYSTEM, METHOD AND COMPUTER PROGRAM PRODUCT FOR THE OPTIMIZATION OF PRICES TO SATISFY CERTAIN BUSINESS OBJECTIVES

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Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

TRANSMITTAL OF APPEAL BRIEF  
(PATENT APPLICATION-37 C.F.R. § 41.37)

1. This brief is in furtherance of the Notice of Appeal filed August 31, 2005, a substitute for the Appeal Brief filed October 26, 2005, and in response to the Notification of Non-Compliant Appeal Brief mailed on December 21, 2005 (see attached). While appellant disagrees with the Examiner as to whether the alleged deficiencies exist in the original Appeal Brief, a Substitute Appeal Brief with appropriate edits is nevertheless submitted to expedite prosecution.

## 2. STATUS OF APPLICANT

This application is on behalf of a small entity. A statement was already filed.

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CERTIFICATION UNDER 37 C.F.R. §§ 1.8(a) and 1.10\*

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Express Mail certification is optional.)

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37 C.F.R. § 1.8(a)

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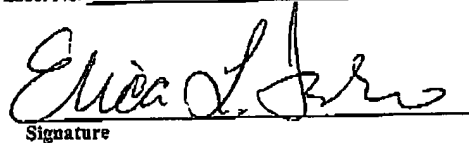
37 C.F.R. § 1.10\*

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Signature

Date:

1/12/2006

Erica L. Farlow

(type or print name of person certifying)

\* Only the date of filing (' 1.6) will be the date used in a patent term adjustment calculation, although the date on any certificate of mailing or transmission under ' 1.8 continues to be taken into account in determining timeliness. See ' 1.703(f). Consider "Express Mail Post Office to Addressee" (' 1.10) or facsimile transmission (' 1.6(d)) for the reply to be accorded the earliest possible filing date for patent term adjustment calculations.

Transmittal of Appeal Brief--page 1 of 2

**3. FEE FOR FILING APPEAL BRIEF**

Pursuant to 37 C.F.R. §1.17(c), the fee for filing the Appeal Brief has already been paid. However, the Commissioner is authorized to charge any fees that may be due to deposit account 50-1351 (ABE1P001).

**4. EXTENSION OF TERM**

The proceedings herein are for a patent application and the provisions of 37 C.F.R. § 1.136 apply.

Applicant believes that no extension of term is required. However, this conditional petition is being made to provide for the possibility that applicant has inadvertently overlooked the need for a petition and fee for extension of time.

**5. TOTAL FEE DUE**

The total fee due is:

Appeal brief fee \$0.00 (previously paid on October 26, 2005)  
Total Fee Due \$0.00

**6. FEE PAYMENT**

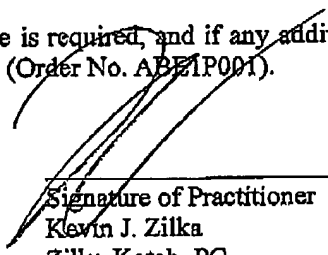
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A duplicate of this transmittal is attached.

**7. FEE DEFICIENCY**

If any additional extension and/or fee is required, and if any additional fee for claims is required, charge Deposit Account No. 50-1351 (Order No. ABE1P001).

Reg. No.: 41,429  
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\_\_\_\_\_  
Signature of Practitioner  
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USA

Practitioner's Docket No. ABE1P001



## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: John R. Abe

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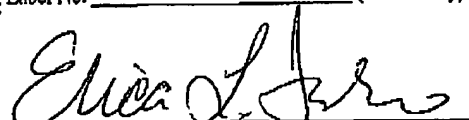
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## TRANSMISSION

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Signature

Erica L. Farlow

(type or print name of person certifying)

\* Only the date of filing (\* 1.6) will be the date used in a patent term adjustment calculation, although the date on any certificate of mailing or transmission under \* 1.8 continues to be taken into account in determining timeliness. See \* 1.703(f). Consider "Express Mail Post Office to Addressee" (\* 1.10) or facsimile transmission (\* 1.6(d)) for the reply to be accorded the earliest possible filing date for patent term adjustment calculations.

Transmittal of Appeal Brief—page 1 of 2

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**4. EXTENSION OF TERM**

The proceedings herein are for a patent application and the provisions of 37 C.F.R. § 1.136 apply.

Applicant believes that no extension of term is required. However, this conditional petition is being made to provide for the possibility that applicant has inadvertently overlooked the need for a petition and fee for extension of time.

**5. TOTAL FEE DUE**

The total fee due is:

Appeal brief fee \$0.00 (previously paid on October 26, 2005)  
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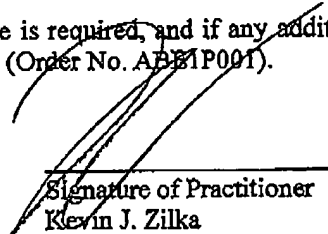
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Signature of Practitioner  
Kevin J. Zilka  
Zilka-Kotab, PC  
P.O. Box 721120  
San Jose, CA 95172-1120  
USA

Transmittal of Appeal Brief—page 2 of 2

**PATENT**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re the application of )  
)  
John R. Abe ) Group Art Unit: 3639  
)  
Application No. 10/644,949 ) Ex: Dixon, Thomas  
)  
Filed: August 19, 2003 ) Date: January 12, 2006  
)  
For: SYSTEM, METHOD AND COMPUTER )  
PROGRAM PRODUCT FOR THE )  
OPTIMIZATION OF PRICES TO SATISFY )  
CERTAIN BUSINESS OBJECTIVES )

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**ATTENTION: Board of Patent Appeals and Interferences**

**SUBSTITUTE APPEAL BRIEF (37 C.F.R. § 41.37)**

This brief is in furtherance of the Notice of Appeal filed August 31, 2005, a substitute for the Appeal Brief filed October 26, 2005, and in response to the Notification of Non-Compliant Appeal Brief mailed on December 21, 2005 (see attached). While appellant disagrees with the Examiner as to whether the alleged deficiencies exist in the original Appeal Brief, a Substitute Appeal Brief with appropriate edits is nevertheless submitted to expedite prosecution.

The fees required under § 1.17, and any required petition for extension of time for filing this brief and fees therefor, are dealt with in the accompanying TRANSMITTAL OF APPEAL BRIEF.

This brief contains these items under the following headings, and in the order set forth below (37 C.F.R. § 41.37(c)(i)):

- I REAL PARTY IN INTEREST
- II RELATED APPEALS AND INTERFERENCES
- III STATUS OF CLAIMS
- IV STATUS OF AMENDMENTS
- V SUMMARY OF CLAIMED SUBJECT MATTER
- VI CONCISE STATEMENT OF EACH OF THE GROUNDS OF REJECTION  
PRESENTED FOR REVIEW
- VII ARGUMENTS
- VIII APPENDIX OF CLAIMS INVOLVED IN THE APPEAL
- IX APPENDIX LISTING ANY EVIDENCE RELIED ON BY THE APPELLANT IN  
THE APPEAL

The final page of this brief bears the practitioner's signature.



**I REAL PARTY IN INTEREST (37 C.F.R. § 41.37(c)(1)(i))**

The real party in interest in this appeal is John R. Abe.

**II RELATED APPEALS AND INTERFERENCES (37 C.F.R. § 41.37(c) (1)(ii))**

With respect to other prior or pending appeals, interferences, or related judicial proceedings that will directly affect, or be directly affected by, or have a bearing on the Board's decision in the pending appeal, an appeal noted on August 24, 2005 in application serial number 10/644,944 may be, but is not necessarily, related.

Since no decision(s) has been rendered in such proceeding(s), no Related Proceedings Appendix is appended hereto.

### **III STATUS OF CLAIMS (37 C.F.R. § 41.37(c) (1)(iii))**

#### **A. TOTAL NUMBER OF CLAIMS IN APPLICATION**

Claims in the application are: 1-8, 13-15, 17 and 19-36

#### **B. STATUS OF ALL THE CLAIMS IN APPLICATION**

1. Claims withdrawn from consideration: None
2. Claims pending: 1-8, 13-15, 17 and 19-36
3. Claims allowed: None
4. Claims rejected: 1-8, 13-15, 17 and 19-36

#### **C. CLAIMS ON APPEAL**

The claims on appeal are: 1-8, 13-15, 17 and 19-36

See additional status information in the Appendix of Claims.

**IV STATUS OF AMENDMENTS (37 C.F.R. § 41.37(c)(1)(iv))**

As to the status of any amendment filed subsequent to final rejection, there are no such amendments after final.

**V SUMMARY OF CLAIMED SUBJECT MATTER (37 C.F.R. § 41.37(c)(1)(v))**

With respect to a summary of Claims 1, 19, and 20, as shown in Figures 2 and 13, a system, method and computer program product are provided for determining an optimal price. In use, a plurality of prices associated with a price-frequency mathematical distribution of competitor prices (e.g. items 202-208 of Figure 2) and a number of competitors (e.g. item 210 of Figure 2) are received. In addition, a business objective is also received which is selected from the group consisting of maximizing revenue for the good or service, maximizing gross profit for the good or service, maximizing factory utilization for the good or service, achieving a market share goal for the good or service, and maximizing earnings before income tax (EBIT) for the good or service, utilizing the input device of the computer system (e.g. item 216 of Figure 2). Still yet, a cost associated with a good or service is received (e.g. item 218 of Figure 2). An optimal price is then calculated based on the prices, number of competitors, business objective, and cost associated with a good or service (e.g. item 222 of Figure 2) and the optimal price for performing the business objective is output. Note page 9, line 19-page 10, line 22, for example.

**VI CONCISE STATEMENT OF EACH OF THE GROUNDS OF REJECTION  
PRESENTED FOR REVIEW (37 C.F.R. § 41.37(c)(1)(vi))**

Following, under each issue listed, is a concise statement setting forth the corresponding ground of rejection.

Issue # 1: The Examiner has rejected Claims 1-8, 13-15, 17 and 19-36 under 35 U.S.C. 102(b) a being anticipated by Phillips et al., U.S. Patent Application Publication No. 2002/0116348.

**VII ARGUMENTS (37 C.F.R. § 41.37(c)(1)(vii))**Issue #1:

The Examiner has rejected Claims 1-8, 13-15, 17 and 19-36 under 35 U.S.C. 102(b) a being anticipated by Phillips et al. (U.S. Patent Application Publication No. 2002/0116348).

*Group #1: Claims 1, 19, 20 and 36*

The Examiner has relied on Figures 1-3, 6-7, paragraphs [0013]-[0014] and [0018] to make a prior art showing of appellant's claimed "receiving a plurality of prices associated with a price-frequency mathematical distribution of competitor prices" (see the same or similar, but not identical language in each of the independent claims).

Appellant respectfully asserts that there is no disclosure in Phillips that meets appellant's specific claim language. For example, Phillips completely fails to even mention any sort of competitor prices.

Specifically, FIG. 1 makes no disclosure of "receiving a plurality of prices associated with a price-frequency mathematical distribution of competitor prices" as claimed by appellant (see the same or similar, but not identical language in each of the independent claims). In addition, FIG. 2 from Philips only identifies a Transaction Database [120], a Normalized Sales Forecaster [130], and a Price Sensitivity Model [140], all of which refer to capturing historical sales, normalizing historical sales for the purposes of forecasting, and predicting sales based on historical transactions. Clearly such teachings fail to meet appellant's specific claim language since they completely fail to even suggest "a plurality of prices associated with a price-frequency mathematical distribution of competitor prices." Furthermore, FIG. 3, titled Historical Line Items, shows a sales history that includes price and quantity sold, which further amplifies appellant's assertion that Phillips does not utilize a price-frequency mathematical distribution of competitor prices in any manner. Regarding FIGS. 6 and 7, appellant finds no reference or terms directly or indirectly inferring the use of a price-frequency distribution of competitor prices.

Additionally, appellant notes that there is no disclosure in Phillips of “receiving a number of competitors” as claimed by appellant (see the same or similar, but not identical language in each of the independent claims). The Examiner has again relied on Figures 1-3, 6-7, paragraphs [0013]-[0014] and [0018] to meet such claim language. As noted above, appellant respectfully asserts that such Figures and associated descriptions relied on by the Examiner merely relate to capturing historical sales, normalizing historical sales for the purposes of forecasting, and predicting sales based on historical transactions (Figure 2) and a sales history that includes price and quantity sold (Figure 3). Again, with respect to the remaining figures relied on by the Examiner, appellant has not found any disclosure of “a number of competitors.”

Only appellant teaches and claims such competitor-specific information, namely “a number of competitors” and “prices associated with a price-frequency mathematical distribution of competitor prices.” By these unique features, an optimal price is generated that is more relevant to competitors, etc. Specifically, with respect to the claimed “number of competitors,” for example, the significance of this omission in Phillips is clear when considering the following example. If a supplier determines the optimal price to sell their product is \$35.00 with a single competitor, the presence of twenty competitors would result in the supplier’s optimal price being likely lower.

The Examiner is reminded that a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. Of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Moreover, the identical invention must be shown in as complete detail as contained in the claim. *Richardson v. Suzuki Motor Co.* 868 F.2d 1226, 1236, 9USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claim.

This criterion has simply not been met by the Phillips reference, since it fails to teach or suggest all of appellant’s claim limitations, as noted above. To this end, the rejection should be withdrawn.



*Group #2: Claim 2*

The Examiner has relied on Figure 4 to make a prior art showing of appellant's claimed technique "wherein the price-frequency mathematical distribution includes a price-frequency mathematical curve." Appellant respectfully asserts that such figure is not a frequency distribution curve (count or frequency vs. variable), nor does it depict a price-frequency distribution of competitor prices. In fact, appellant notes that the description of FIG. 4 found in paragraph [0028], does not disclose any sort of a price-frequency mathematical distribution curve.

Again, appellant respectfully asserts that the Phillips reference does not anticipate appellant's specific claim language since it fails to teach or suggest all of appellant's claim limitations, as noted above.

*Group #3: Claim 3*

The Examiner has relied on Figure 4 to make a prior art showing of appellant's claimed technique "wherein the plurality of prices include a highest frequency price." Appellant respectfully asserts that such figure does not teach appellant's specific claim language since Figure 4 does not show any sort of frequency in the manner claimed by appellant.

Again, appellant respectfully asserts that the Phillips reference does not anticipate appellant's specific claim language since it fails to teach or suggest all of appellant's claim limitations, as noted above.

*Group #4: Claim 4*

The Examiner has relied on Figures 3-5 and paragraphs [0052]-[0068] to make a prior art showing of appellant's claimed technique "wherein the plurality of prices include a mean price." Appellant respectfully asserts that such figures and excerpts fail to even mention a mean price as claimed by appellant.

Again, appellant respectfully asserts that the Phillips reference does not anticipate appellant's specific claim language since it fails to teach or suggest all of appellant's claim limitations, as noted above.

*Group #5: Claim 5*

The Examiner has relied on Figures 3-5 and paragraphs [0052]-[0068] to make a prior art showing of appellant's claimed technique "wherein the plurality of prices include a standard deviation low price." Appellant respectfully asserts that such figures and excerpts fail to even mention a standard deviation low price as claimed by appellant.

Again, appellant respectfully asserts that the Phillips reference does not anticipate appellant's specific claim language since it fails to teach or suggest all of appellant's claim limitations, as noted above.

*Group #6: Claim 6*

The Examiner has relied on Figures 3-5 and paragraphs [0052]-[0068] to make a prior art showing of appellant's claimed technique "wherein the plurality of prices include a standard deviation high price." Appellant respectfully asserts that such figures and excerpts fail to even mention a standard deviation high price as claimed by appellant.

Again, appellant respectfully asserts that the Phillips reference does not anticipate appellant's specific claim language since it fails to teach or suggest all of appellant's claim limitations, as noted above.

*Group #7: Claim 7*

The Examiner has relied on Figures 3-5 and paragraphs [0052]-[0068] to make a prior art showing of appellant's claimed technique "wherein the plurality of prices include a price

associated with a beginning of the price-frequency mathematical distribution.” Appellant respectfully asserts that such figures and excerpts fail to even mention a price associated with a beginning of the price-frequency mathematical distribution as claimed by appellant.

Again, appellant respectfully asserts that the Phillips reference does not anticipate appellant’s specific claim language since it fails to teach or suggest all of appellant’s claim limitations, as noted above.

*Group #8: Claim 8*

The Examiner has relied on Figures 3-5 and paragraphs [0052]-[0068] to make a prior art showing of appellant’s claimed technique “wherein the plurality of prices include a price associated with an end of the price-frequency mathematical distribution.” Appellant respectfully asserts that such figures and excerpts fail to even mention a price associated with an end of the price-frequency mathematical distribution as claimed by appellant.

Again, appellant respectfully asserts that the Phillips reference does not anticipate appellant’s specific claim language since it fails to teach or suggest all of appellant’s claim limitations, as noted above.

*Group #9: Claim 13*

The Examiner has relied on paragraphs [0013]-[0014] and [0018] to make a prior art showing of appellant’s claimed “receiving a sales and administration cost, utilizing the input device.” Appellant respectfully asserts that Phillips makes no specific disclosure in paragraphs [0013], [0014] and [0018] of “a sales and administration cost” as specifically claimed by appellant.

Again, appellant respectfully asserts that the Phillips reference does not anticipate appellant’s specific claim language since it fails to teach or suggest all of appellant’s claim limitations, as noted above.

*Group #10: Claim 14*

The Examiner has relied on paragraphs [0013]-[0014] and [0018] to make a prior art showing of appellant's claimed technique "wherein the business objective includes maximizing earnings before income tax (EBIT) for the good or service." Appellant respectfully asserts that such excerpt fails to disclose any sort of maximizing earnings before income tax (EBIT) business object. In fact, after careful review of the entire Phillips reference, appellant notes that nowhere in such reference is there any disclosure of utilizing EBIT or earnings before income tax, and especially not in the manner claimed by appellant.

Again, appellant respectfully asserts that the Phillips reference does not anticipate appellant's specific claim language since it fails to teach or suggest all of appellant's claim limitations, as noted above.

*Group #11: Claim 15*

The Examiner has relied on Figures 2 and along with paragraphs [0013]-[0014] and [0018] to make a prior art showing of appellant's claimed technique "wherein the calculating is carried out utilizing a frequency distribution engine, a probability of win engine, an expected results engine." Appellant respectfully asserts that such figures and excerpts fail to even mention utilizing a frequency distribution engine, a probability of win engine, an expected results engine as claimed by appellant.

Again, appellant respectfully asserts that the Phillips reference does not anticipate appellant's specific claim language since it fails to teach or suggest all of appellant's claim limitations, as noted above.

*Group #12: Claim 17*

The Examiner has relied on paragraph [0018] to make a prior art showing of appellant's claimed technique "wherein the calculating further includes adjusting the probability of a customer

purchase based on the number of competitors.” Appellant respectfully asserts that such figures and excerpts fail disclose adjusting the probability of a customer purchase, let alone based on the number of competitors, as claimed by appellant.

Again, appellant respectfully asserts that the Phillips reference does not anticipate appellant’s specific claim language since it fails to teach or suggest all of appellant’s claim limitations, as noted above.

*Group #13: Claim 21*

The Examiner has relied on Figures 1-7 to make a prior art showing of appellant’s claimed technique “wherein a graphical user interface is included for inputting the competitor prices and the number of competitors.” Appellant respectfully asserts that such Figures only show a GUI, but not any sort of inputting of competitor prices and a number of competitors as claimed by appellant.

Again, appellant respectfully asserts that the Phillips reference does not anticipate appellant’s specific claim language since it fails to teach or suggest all of appellant’s claim limitations, as noted above.

*Group #14: Claim 22*

The Examiner has relied on Figures 1-7 to make a prior art showing of appellant’s claimed technique “wherein the graphical user interface is adapted for inputting the business objective.” Appellant respectfully asserts that such Figures only show a GUI, but not any sort of inputting a business objective as claimed by appellant.

Again, appellant respectfully asserts that the Phillips reference does not anticipate appellant’s specific claim language since it fails to teach or suggest all of appellant’s claim limitations, as noted above.

*Group #15: Claim 23*

The Examiner has relied on paragraphs [0052]-[0068] to make a prior art showing of appellant's claimed technique "wherein the price-frequency mathematical distribution is used to estimate the competitor prices." Appellant respectfully asserts that such excerpts do not teach a price-frequency mathematical distribution, let alone where one is "used to estimate the competitor prices" as claimed by appellant.

Again, appellant respectfully asserts that the Phillips reference does not anticipate appellant's specific claim language since it fails to teach or suggest all of appellant's claim limitations, as noted above.

*Group #16: Claim 24*

The Examiner has relied on paragraphs [0052]-[0068] to make a prior art showing of appellant's claimed technique "wherein the price-frequency distribution is estimated using the set of competitor prices." Appellant respectfully asserts that such excerpts do not teach any sort of price-frequency mathematical distribution, let alone where one is "estimated using the set of competitor prices" as claimed by appellant.

Again, appellant respectfully asserts that the Phillips reference does not anticipate appellant's specific claim language since it fails to teach or suggest all of appellant's claim limitations, as noted above.

*Group #17: Claim 25*

The Examiner has relied on paragraph [0018] to make a prior art showing of appellant's claimed technique "wherein the price-frequency mathematical distribution is converted to an expected probability of a customer purchase based on the number of competitors." Appellant respectfully asserts that such excerpt does not teach a price-frequency mathematical distribution, and

especially not one that is “converted to an expected probability of a customer purchase based on the number of competitors” as claimed by appellant.

Again, appellant respectfully asserts that the Phillips reference does not anticipate appellant’s specific claim language since it fails to teach or suggest all of appellant’s claim limitations, as noted above.

*Group #18: Claim 26*

The Examiner has relied on the tables in Figures 3-6 to make a prior art showing of appellant’s claimed technique “wherein the price-frequency mathematical distribution is converted to a table of prices with a frequency of a price within the table corresponding to the price-frequency mathematical distribution.” Appellant respectfully asserts that the tables in FIG. 3 and 5 refer to the price that a product was sold by the company attempting to optimize the price and therefore by definition do not contain competitor prices, as does appellant’s claim language when read in context.

Again, appellant respectfully asserts that the Phillips reference does not anticipate appellant’s specific claim language since it fails to teach or suggest all of appellant’s claim limitations, as noted above.

*Group #19: Claim 27*

The Examiner has relied on paragraphs [0013]-[0014], [0018] and [0052]-[0068] to make a prior art showing of appellant’s claimed technique “wherein each price, probability of a customer purchase, and cost-per-unit are used to form an income/operational statement for each member of a plurality of prices.” Appellant respectfully asserts that such specific claim language is not taught in such excerpts.

Again, appellant respectfully asserts that the Phillips reference does not anticipate appellant's specific claim language since it fails to teach or suggest all of appellant's claim limitations, as noted above.

*Group #20: Claim 28*

The Examiner has relied on paragraph [0018] to make a prior art showing of appellant's claimed technique "wherein each income/operational statement is comprised of financial and operational terms including revenue, cost-of-goods, gross profit, factory utilization, and market penetration." Appellant respectfully asserts that such excerpts fail to even mention any sort of factory utilization and market penetration as claimed by appellant.

Again, appellant respectfully asserts that the Phillips reference does not anticipate appellant's specific claim language since it fails to teach or suggest all of appellant's claim limitations, as noted above.

*Group #21: Claim 29*

The Examiner has relied on Figures 1-7 to make a prior art showing of appellant's claimed technique "wherein a set of the income/operational statements are stored within a table." Appellant respectfully asserts that such figures fail to show "a set of the income/operational statements" as claimed by appellant. Appellant further notes that the entire Phillips reference also fails to even suggest such specific claim language.

Again, appellant respectfully asserts that the Phillips reference does not anticipate appellant's specific claim language since it fails to teach or suggest all of appellant's claim limitations, as noted above.

*Group #22: Claim 30*



The Examiner has relied on paragraphs [0031]-[0039] and [0076]-[0077] to make a prior art showing of appellant's claimed technique "wherein a maximum revenue value, a maximum profit value, a plurality of factory utilization values, and the market penetration value corresponding to a market penetration goal are identified along with corresponding prices." Appellant respectfully asserts that such excerpts fail to disclose "a maximum revenue value, a maximum profit value, a plurality of factory utilization values, and the market penetration value corresponding to a market penetration goal" as specifically claimed by appellant.

Again, appellant respectfully asserts that the Phillips reference does not anticipate appellant's specific claim language since it fails to teach or suggest all of appellant's claim limitations, as noted above.

*Group #23: Claim 31*

The Examiner has relied on paragraphs [0031]-[0039] and [0076]-[0077] to make a prior art showing of appellant's claimed technique "wherein the optimal price satisfying the selected objectives is identified." Appellant respectfully asserts that appellant's claimed objectives are more expansive and comprehensive than those disclosed in Phillips, and that therefore Phillips does not allow for an "optimal price satisfying the selected objectives...[to be] identified" as claimed by appellant (emphasis added).

Again, appellant respectfully asserts that the Phillips reference does not anticipate appellant's specific claim language since it fails to teach or suggest all of appellant's claim limitations, as noted above.

*Group #24: Claim 32*

The Examiner has relied on paragraphs [0031]-[0039] and [0076]-[0077] to make a prior art showing of appellant's claimed technique "wherein each price, probability of a customer purchase, and cost-per-unit are used to form an income/operational statement for each member of a plurality of prices." Appellant respectfully asserts that such excerpts along with the entire

Phillips reference fail to teach utilizing a “probability of a customer purchase,” let alone in the specific manner claimed by appellant.

Again, appellant respectfully asserts that the Phillips reference does not anticipate appellant’s specific claim language since it fails to teach or suggest all of appellant’s claim limitations, as noted above.

*Group #25: Claim 33*

The Examiner has relied on paragraphs [0031]-[0039] and [0076]-[0077] to make a prior art showing of appellant’s claimed technique “wherein each income/operational statement is comprised of financial and operational terms including revenue, cost-of-goods, gross profit, factory utilization, and market penetration.” Appellant respectfully asserts that such excerpts along with the entire Phillips reference fail to teach “financial and operational terms including revenue, cost-of-goods, gross profit, factory utilization, and market penetration” as specifically claimed by appellant.

Again, appellant respectfully asserts that the Phillips reference does not anticipate appellant’s specific claim language since it fails to teach or suggest all of appellant’s claim limitations, as noted above.

*Group #26: Claim 34*

The Examiner has relied on paragraphs [0031]-[0039] and [0076]-[0077] to make a prior art showing of appellant’s claimed technique “wherein a set of the income/operational statements are stored within a table.” Appellant respectfully asserts that such excerpts fail to meet such specific claim language since they do not even suggest a “set of the income/operational statements.”

Again, appellant respectfully asserts that the Phillips reference does not anticipate appellant's specific claim language since it fails to teach or suggest all of appellant's claim limitations, as noted above.

*Group #27: Claim 35*

The Examiner has relied on paragraphs [0031]-[0039] and [0076]-[0077] to make a prior art showing of appellant's claimed technique "wherein a maximum revenue value, a maximum profit value, a plurality of factory utilization values, and the market penetration value corresponding to a market penetration goal are identified along with corresponding prices." Appellant respectfully asserts that such excerpts fail to meet appellant's specific claim language since they fail to disclose "a maximum revenue value, a maximum profit value, a plurality of factory utilization values, and the market penetration value corresponding to a market penetration goal" in the context claimed by appellant.

Again, appellant respectfully asserts that the Phillips reference does not anticipate appellant's specific claim language since it fails to teach or suggest all of appellant's claim limitations, as noted above.

In view of the remarks set forth hereinabove, all of the independent claims are deemed allowable, along with any claims depending therefrom.

**VIII APPENDIX OF CLAIMS (37 C.F.R. § 41.37(c)(1)(viii))**

The text of the claims involved in the appeal (along with associated status information) is set forth below:

1. (Previously Presented) A computer-implemented method for determining an optimal price, comprising:
  - receiving a plurality of prices associated with a price-frequency mathematical distribution of competitor prices, utilizing an input device of a computer system;
  - receiving a number of competitors, utilizing the input device of the computer system;
  - receiving a business objective which is selected from the group consisting of maximizing revenue for the good or service, maximizing gross profit for the good or service, maximizing factory utilization for the good or service, achieving a market share goal for the good or service, and maximizing earnings before income tax (EBIT) for the good or service, utilizing the input device of the computer system;
  - receiving a cost associated with a good or service, utilizing the input device of the computer system;
  - calculating an optimal price based on the prices, number of competitors, business objective, and cost associated with a good or service, utilizing a processor coupled to the input device of the computer system; and
  - outputting the optimal price for performing the business objective, utilizing an output device coupled to the processor of the computer system.
2. (Original) The method as recited in claim 1, wherein the price-frequency mathematical distribution includes a price-frequency mathematical curve.
3. (Original) The method as recited in claim 1, wherein the plurality of prices include a highest frequency price.
4. (Original) The method as recited in claim 1, wherein the plurality of prices include a mean price.

5. (Original) The method as recited in claim 1, wherein the plurality of prices include a standard deviation low price.
6. (Original) The method as recited in claim 1, wherein the plurality of prices include a standard deviation high price.
7. (Original) The method as recited in claim 1, wherein the plurality of prices include a price associated with a beginning of the price-frequency mathematical distribution.
8. (Original) The method as recited in claim 1, wherein the plurality of prices include a price associated with an end of the price-frequency mathematical distribution.
9. – 12. (Cancelled)
13. (Original) The method as recited in claim 1, and further comprising receiving a sales and administration cost, utilizing the input device.
14. (Original) The method as recited in claim 13, wherein the business objective includes maximizing earnings before income tax (EBIT) for the good or service.
15. (Original) The method as recited in claim 1, wherein the calculating is carried out utilizing a frequency distribution engine, a probability of win engine, an expected results engine.
16. (Cancelled)
17. (Previously Presented) The method as recited in claim 1, wherein the calculating further includes adjusting the probability of a customer purchase based on the number of competitors:
18. (Cancelled)

19. (Previously Presented) A computer program product embodied on a computer readable medium for determining an optimal price, comprising:

computer code for receiving a plurality of prices associated with a price-frequency mathematical distribution of competitor prices;

computer code for receiving a number of competitors;

computer code for receiving a business objective which is selected from the group consisting of maximizing revenue for the good or service, maximizing gross profit for the good or service, maximizing factory utilization for the good or service, achieving a market share goal for the good or service, and maximizing earnings before income tax (EBIT) for the good or service;

computer code for receiving a cost associated with a good or service;

computer code for calculating an optimal price based on the prices, number of competitors, business objective, and cost associated with the good or service; and

computer code for outputting the optimal price;

wherein the computer code is executed on a computer for aiding in the performance the business objective.

20. (Previously Presented) A system for determining an optimal price, comprising:

an input device for receiving a plurality of prices associated with a price-frequency mathematical distribution of competitor prices, a number of competitors, a business objective, and a cost associated with good or service, wherein the business objective is selected from the group consisting of maximizing revenue for the good or service, maximizing gross profit for the good or service, maximizing factory utilization for the good or service, achieving a market share goal for the good or service, and maximizing earnings before income tax (EBIT) for the good or service;

a processor including a plurality of engines, and coupled to the input device, the engines of the processor adapted for calculating an optimal price based on the prices, number of competitors, business objective, and cost associated with the good or service; and

a display device coupled to the processor for displaying the optimal price for performing the business objective.

21. (Previously Presented) A method as recited in claim 1, wherein a graphical user interface is included for inputting the competitor prices and the number of competitors.
22. (Previously Presented) A method as recited in claim 21, wherein the graphical user interface is adapted for inputting the business objective.
23. (Previously Presented) A method as recited in claim 22, wherein the price-frequency mathematical distribution is used to estimate the competitor prices.
24. (Previously Presented) The method as described in claim 22, wherein the price-frequency distribution is estimated using the set of competitor prices.
25. (Previously Presented) The method as described in claim 22, wherein the price-frequency mathematical distribution is converted to an expected probability of a customer purchase based on the number of competitors.
26. (Previously Presented) A method as recited in claim 22, wherein the price-frequency mathematical distribution is converted to a table of prices with a frequency of a price within the table corresponding to the price-frequency mathematical distribution.
27. (Previously Presented) A method as recited in claim 26, wherein each price, probability of a customer purchase, and cost-per-unit are used to form an income/operational statement for each member of a plurality of prices.
28. (Previously Presented) A method as recited in claim 27, wherein each income/operational statement is comprised of financial and operational terms including revenue, cost-of-goods, gross profit, factory utilization, and market penetration.
29. (Previously Presented) A method as recited in claim 28, wherein a set of the income/operational statements are stored within a table.

30. (Previously Presented) A method as recited in claim 29, wherein a maximum revenue value, a maximum profit value, a plurality of factory utilization values, and the market penetration value corresponding to a market penetration goal are identified along with corresponding prices.
31. (Previously Presented) The method as described in claim 30, wherein the optimal price satisfying the selected objectives is identified.
32. (Previously Presented) A method as recited in claim 17, wherein each price, probability of a customer purchase, and cost-per-unit are used to form an income/operational statement for each member of a plurality of prices.
33. (Previously Presented) A method as recited in claim 17, wherein each income/operational statement is comprised of financial and operational terms including revenue, cost-of-goods, gross profit, factory utilization, and market penetration.
34. (Previously Presented) A method as recited in claim 17, wherein a set of the income/operational statements are stored within a table.
35. (Previously Presented) A method as recited in claim 32, wherein a maximum revenue value, a maximum profit value, a plurality of factory utilization values, and the market penetration value corresponding to a market penetration goal are identified along with corresponding prices.
36. (Previously Presented) The method as described in claim 35, wherein the optimal price satisfying the selected objectives is identified.



**IX APPENDIX LISTING ANY EVIDENCE RELIED ON BY THE APPELLANT IN THE  
APPEAL (37 C.F.R. § 41.37(c)(1)(ix))**

There is no such evidence.

In the event a telephone conversation would expedite the prosecution of this application, the Examiner may reach the undersigned at (408) 971-2573. For payment of any additional fees due in connection with the filing of this paper, the Commissioner is authorized to charge such fees to Deposit Account No. 50-1351 (Order No. ABE1P001).

Respectfully submitted,

By: \_\_\_\_\_

Kevin J. Zilka

Reg. No. 41,429

Date: 1/12/06

Zilka-Kotab, P.C.  
P.O. Box 721120  
San Jose, California 95172-1120  
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/644,949	08/19/2003	John R. Abe	ABE1P001	6802
28875	7590	12/21/2005	EXAMINER	
Zilka-Kotab, PC P.O. BOX 721120 SAN JOSE, CA 95172-1120			ART UNIT	PAPER NUMBER

DATE MAILED: 12/21/2005

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10/644,967

EXAMINER

ART UNIT

PAPER

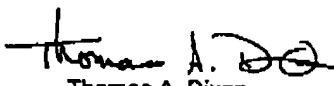
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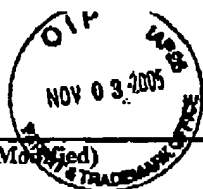
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Commissioner for Patents

The ids filed 11/3/05 has been considered.

  
Thomas A. Dixon  
Primary Examiner  
Art Unit: 3639

PTO-90C (Rev. 04-03)



Form 1449 (Modified)	Atty. Docket No. ABE1P001	Application No.: 10/644,949
Information Disclosure Statement By Applicant	Applicant: John R. Abe	
(Use Several Sheets if Necessary)	Filing Date: 08/19/2003	Group Art Unit: 3639

## U.S. Patent Documents

Examiner Initial	No.	Patent No.	Date	Patentee	Class
<i>D</i>	A	6,553,346	04-2003	Walker et al.	705/1
	B	5,873,069	02-1999	Reuhl et al.	705/20
	C				
	D				
	E				
	F				
	G				
	H				
	I				
	J				
	K				

## Foreign Patent or Published Foreign Patent Application

Examiner Initial	No.	Document No.	Publication Date	Country or Patent Office	Class	Sub-class	Translation	
	L						Yes	No
	M							
	N							
	O							
	P							

## Other Documents

Examiner Initial	No.	Author, Title, Date, Place (e.g. Journal) of Publication
<i>D</i>	R	Copy of Office Action Summary from application no. 10/652,640 which was mailed on 08/11/2005.
	S	
	T	
Examiner	Thomas A. <i>DA</i>	
	Date Considered	12/13/05

Examiner: Initial citation considered. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant.

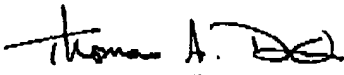
<b>Notification of Non-Compliant Appeal Brief (37 CFR 41.37)</b>	Application No. 10/644,949	Applicant(s) ABE, JOHN R.	
	Examiner Thomas A. Dixon	Art Unit 3639	

*--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--*

The Appeal Brief filed on 28 October 2005 is defective for failure to comply with one or more provisions of 37 CFR 41.37.

To avoid dismissal of the appeal, applicant must file an amended brief or other appropriate correction (see MPEP 1205.03) within **ONE MONTH** or **THIRTY DAYS** from the mailing date of this Notification, whichever is longer. **EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136.**

1. ☒ The brief does not contain the items required under 37 CFR 41.37(c), or the items are not under the proper heading or in the proper order.
2. ☐ The brief does not contain a statement of the status of all claims, (e.g., rejected, allowed, withdrawn, objected to, canceled), or does not identify the appealed claims (37 CFR 41.37(c)(1)(iii)).
3. ☐ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 41.37(c)(1)(iv)).
4. ☒ (a) The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).
5. ☒ The brief does not contain a concise statement of each ground of rejection presented for review (37 CFR 41.37(c)(1)(vi)).
6. ☐ The brief does not present an argument under a separate heading for each ground of rejection on appeal (37 CFR 41.37(c)(1)(vii)).
7. ☐ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 41.37(c)(1)(viii)).
8. ☐ The brief does not contain copies of the evidence submitted under 37 CFR 1.130, 1.131, or 1.132 or of any other evidence entered by the examiner and relied upon by appellant in the appeal, along with a statement setting forth where in the record that evidence was entered by the examiner, as an appendix thereto (37 CFR 41.37(c)(1)(ix)).
9. ☐ The brief does not contain copies of the decisions rendered by a court or the Board in the proceeding identified in the Related Appeals and Interferences section of the brief as an appendix thereto (37 CFR 41.37(c)(1)(x)).
10. ☐ Other (including any explanation in support of the above items):  
  
\_\_\_\_\_

  
 Thomas A. Dixon  
 Primary Examiner  
 Art Unit: 3639

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DocId: No. 40897146 App. No: 10/644,944

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App. No:10/644,944

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August 24, 2005

Practitioner's Docket No. ABE1P002

PATENT

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: John R. Abe

Application No.: 10/644,944

Group No.: 3639

Filed: August 19, 2003

Examiner: Woo, Richard S.

For: CONTINUOUS PRIZE OPTIMIZATION SYSTEM, METHOD AND COMPUTER PROGRAM  
PRODUCT FOR SATISFYING CERTAIN BUSINESS OBJECTIVES

Mail Stop AF

Commissioner for Patents

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Alexandria, VA 22313-1450

NOTICE OF APPEAL FROM THE PRIMARY EXAMINER  
TO THE BOARD OF PATENT APPEALS AND INTERFERENCES  
(37 C.F.R. § 41.31)

Applicant hereby appeals to the Board from the decision of the Primary Examiner, mailed June 2, 2005, for a second time rejecting claims 1, 3, 4, 6-9, 11-13, and 17-40.

## 1. STATUS OF APPLICANT

This application is on behalf of a small entity. Small Entity Status was requested on August 19, 2003.

CERTIFICATION UNDER 37 C.F.R. " 1.8(a) and 1.10\*  
(When using Express Mail, the Express Mail label number is *mandatory*;  
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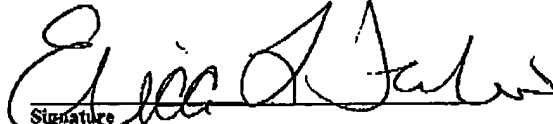
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Date:

8/24/2005

Signature



Erica L. Farlow

(type or print name of person certifying)

\* Only the date of filing (" 1.6) will be the date used in a patent term adjustment calculation, although the date on any certificate of mailing or transmission under " 1.8 continues to be taken into account in determining timeliness. See " 1.703(f). Consider "Express Mail Post Office to Addressee" (" 1.10) or facsimile transmission (" 1.6(d)) for the reply to be accorded the earliest possible filing date for patent term adjustment calculations.

**2. FEE FOR FILING NOTICE OF APPEAL**

Pursuant to 37 C.F.R. § 41.20(b)(1), the fee for filing the Appeal Brief is:

Small entity \$250.00

Notice of Appeal fee due \$250.00

**3. EXTENSION OF TERM**

The proceedings herein are for a patent application and the provisions of 37 C.F.R.1.136 apply.

Applicant believes that no extension of term is required. However, this conditional petition is being made to provide for the possibility that applicant has inadvertently overlooked the need for a petition and fee for extension of time.

**4. TOTAL FEE DUE**

The total fee due is:

Notice of Appeal fee \$250.00

**TOTAL FEE DUE \$250.00**

**5. FEE PAYMENT**

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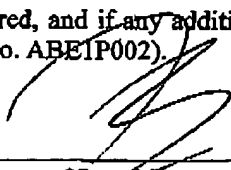
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\_\_\_\_\_  
Signature of Practitioner  
Kevin J. Zilka  
Zilka-Kotab, PC  
P.O. Box 721120  
San Jose, CA 95172-1120  
USA



Practitioner's Docket No. ABE1P002

PATENT

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: John R. Abe

Application No.: 10/644,944

Group No.: 3639

Filed: August 19, 2003

Examiner: Woo, Richard S.

For: CONTINUOUS PRIZE OPTIMIZATION SYSTEM, METHOD AND COMPUTER PROGRAM  
PRODUCT FOR SATISFYING CERTAIN BUSINESS OBJECTIVESMail Stop AF  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450NOTICE OF APPEAL FROM THE PRIMARY EXAMINER  
TO THE BOARD OF PATENT APPEALS AND INTERFERENCES  
(37 C.F.R. § 41.31)

Applicant hereby appeals to the Board from the decision of the Primary Examiner, mailed June 2, 2005, for a second time rejecting claims 1, 3, 4, 6-9, 11-13, and 17-40.

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Erica L. Farlow

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\* Only the date of filing (" 1.6) will be the date used in a patent term adjustment calculation, although the date on any certificate of mailing or transmission under " 1.8 continues to be taken into account in determining timeliness. See " 1.703(f). Consider "Express Mail Post Office to Addressee" (" 1.10) or facsimile transmission (" 1.6(d)) for the reply to be accorded the earliest possible filing date for patent term adjustment calculations.

Notice of Appeal from the Primary Examiner to Board—page 1 of 2

**2. FEE FOR FILING NOTICE OF APPEAL**

Pursuant to 37 C.F.R. § 41.20(b)(1), the fee for filing the Appeal Brief is:

Small entity \$250.00

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**3. EXTENSION OF TERM**

The proceedings herein are for a patent application and the provisions of 37 C.F.R. 1.136 apply.

Applicant believes that no extension of term is required. However, this conditional petition is being made to provide for the possibility that applicant has inadvertently overlooked the need for a petition and fee for extension of time.

**4. TOTAL FEE DUE**

The total fee due is:

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**TOTAL FEE DUE \$250.00**

**5. FEE PAYMENT**

Authorization is hereby made to charge the amount of \$250.00 to Deposit Account No. 50-1351 (Order No. ABE1P002).

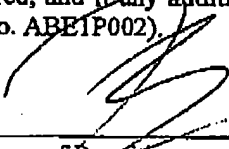
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Reg. No.: 41,429  
Tel. No.: 408-971-2573  
Customer No.: 28875

  
\_\_\_\_\_  
Signature of Practitioner  
Kevin J. Zilka  
Zilka-Kotab, PC  
P.O. Box 721120  
San Jose, CA 95172-1120  
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March 12, 2006



Practitioner's Docket No. ABE1P002

PATENT

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: John R. Abe

Application No.: 10/644,944

Group No.: 3629

Filed: 08/19/2003

Examiner: Woo, Richard

For: CONTINUOUS PRICE OPTIMIZATION SYSTEM, METHOD AND COMPUTER PROGRAM  
PRODUCT FOR SATISFYING CERTAIN BUSINESS OBJECTIVES

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Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

TRANSMITTAL OF APPEAL BRIEF  
(PATENT APPLICATION-37 C.F.R. § 41.37)

1. This brief is in furtherance of the Notice of Appeal filed August 24, 2005, a substitute for the Appeal Brief filed October 25, 2005, and in response to the Notification of Non-Compliant Appeal Brief mailed on December 21, 2005 (see attached). While appellant disagrees with the Examiner as to whether the alleged deficiencies exist in the original Appeal Brief, a Substitute Appeal Brief with appropriate edits is nevertheless submitted to expedite prosecution.
2. STATUS OF APPLICANT

This application is on behalf of a small entity. A statement was already filed.

## CERTIFICATION UNDER 37 C.F.R. §§ 1.8(a) and 1.10\*

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Transmittal of Appeal Brief--page 1 of 2

**3. FEE FOR FILING APPEAL BRIEF**

Pursuant to 37 C.F.R. §1.17(c), the fee for filing the Appeal Brief has already been paid. However, the Commissioner is authorized to charge any fees that may be due to deposit account 50-1351 (ABE1P002).

**4. EXTENSION OF TERM**

The proceedings herein are for a patent application and the provisions of 37 C.F.R. § 1.136 apply.

Applicant believes that no extension of term is required. However, this conditional petition is being made to provide for the possibility that applicant has inadvertently overlooked the need for a petition and fee for extension of time.

**5. TOTAL FEE DUE**

The total fee due is:

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**6. FEE PAYMENT**

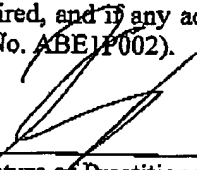
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A duplicate of this transmittal is attached.

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\_\_\_\_\_  
Signature of Practitioner  
Kevin J. Zilka  
Zilka Kotab, PC  
P.O. Box 721120  
San Jose, CA 95172  
USA

Transmittal of Appeal Brief—page 2 of 2

Practitioner's Docket No. ABE1P002



## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: John R. Abe

Application No.: 10/644,944

Group No.: 3629

Filed: 08/19/2003

Examiner: Woo, Richard

For: CONTINUOUS PRICE OPTIMIZATION SYSTEM, METHOD AND COMPUTER PROGRAM  
PRODUCT FOR SATISFYING CERTAIN BUSINESS OBJECTIVESMail Stop Appeal Briefs - Patents  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450TRANSMITTAL OF APPEAL BRIEF  
(PATENT APPLICATION-37 C.F.R. § 41.37)

1. This brief is in furtherance of the Notice of Appeal filed August 24, 2005, a substitute for the Appeal Brief filed October 25, 2005, and in response to the Notification of Non-Compliant Appeal Brief mailed on December 21, 2005 (see attached). While appellant disagrees with the Examiner as to whether the alleged deficiencies exist in the original Appeal Brief, a Substitute Appeal Brief with appropriate edits is nevertheless submitted to expedite prosecution.
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Erica L. Farlow

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4. EXTENSION OF TERM

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Applicant believes that no extension of term is required. However, this conditional petition is being made to provide for the possibility that applicant has inadvertently overlooked the need for a petition and fee for extension of time.

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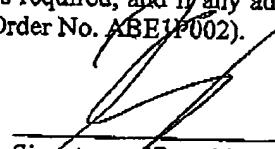
Applicant believes that only the above fees are due in connection with the filing of this paper because the appeal brief fee was paid with a previous omission. However, the Commissioner is authorized to charge any additional fees that may be due (e.g. for any reason including, but not limited to fee changes, etc.) to deposit account 50-1351 (Order No. ABE1P002).

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\_\_\_\_\_  
Signature of Practitioner  
Kevin J. Zilka  
Zilka-Kotab, PC  
P.O. Box 721120  
San Jose, CA 95172  
USA

Transmittal of Appeal Brief--page 2 of 2

**PATENT****IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re the application of: )  
John R. Abe ) Group Art Unit: 3629  
Application No. 10/644,944 ) Examiner: Dixon, Thomas  
Filed: 08/19/2003 ) Atty. Docket No. ABE1P002  
For: CONTINUOUS PRICE ) Date: January 12, 2006  
OPTIMIZATION SYSTEM, METHOD )  
AND COMPUTER PROGRAM )  
PRODUCT FOR SATISFYING )  
CERTAIN BUSINESS OBJECTIVES )

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**ATTENTION: Board of Patent Appeals and Interferences****SUBSTITUTE APPEAL BRIEF (37 C.F.R. § 41.37)**

This brief is in furtherance of the Notice of Appeal filed August 24, 2005, a substitute for the Appeal Brief filed October 25, 2005, and in response to the Notification of Non-Compliant Appeal Brief mailed on December 21, 2005 (see attached). While appellant disagrees with the Examiner as to whether the alleged deficiencies exist in the original Appeal Brief, a Substitute Appeal Brief with appropriate edits is nevertheless submitted to expedite prosecution.

The fees required under § 1.17, and any required petition for extension of time for filing this brief and fees therefor, are dealt with in the accompanying TRANSMITTAL OF APPEAL BRIEF.

This brief contains these items under the following headings, and in the order set forth below (37 C.F.R. § 41.37(c)(i)):

- I REAL PARTY IN INTEREST
- II RELATED APPEALS AND INTERFERENCES
- III STATUS OF CLAIMS
- IV STATUS OF AMENDMENTS
- V SUMMARY OF CLAIMED SUBJECT MATTER
- VI CONCISE STATEMENT OF EACH OF THE GROUNDS OF  
REJECTION PRESENTED FOR REVIEW
- VII ARGUMENTS
- VIII APPENDIX OF CLAIMS INVOLVED IN THE APPEAL
- IX APPENDIX LISTING ANY EVIDENCE RELIED ON BY THE  
APPELLANT IN THE APPEAL

The final page of this brief bears the practitioner's signature.

**I REAL PARTY IN INTEREST (37 C.F.R. § 41.37(c)(1)(i))**

The real party in interest in this appeal is John R. Abe.

## **II RELATED APPEALS AND INTERFERENCES (37 C.F.R. § 41.37(c) (1)(ii))**

With respect to other prior or pending appeals, interferences, or related judicial proceedings that will directly affect, or be directly affected by, or have a bearing on the Board's decision in the pending appeal, an appeal noted on August 31, 2005 in application serial number 10/644,949 may be, but is not necessarily, related.

Since no decision(s) has been rendered in such proceeding(s), no Related Proceedings Appendix is appended hereto.



**III STATUS OF CLAIMS (37 C.F.R. § 41.37(c) (1)(iii))****A. TOTAL NUMBER OF CLAIMS IN APPLICATION**

Claims in the application are: 1, 3, 4, 6-9, 11-13 and 17-40

**B. STATUS OF ALL THE CLAIMS IN APPLICATION**

1. Claims withdrawn from consideration: None
2. Claims pending: 1, 3, 4, 6-9, 11-13 and 17-40
3. Claims allowed: None
4. Claims rejected: 1, 3, 4, 6-9, 11-13 and 17-40

**C. CLAIMS ON APPEAL**

The claims on appeal are: 1, 3, 4, 6-9, 11-13 and 17-40

See additional status information in the Appendix of Claims.

**IV STATUS OF AMENDMENTS (37 C.F.R. § 41.37(c)(1)(iv))**

As to the status of any amendment filed subsequent to final rejection, there are no such amendments after final.

**V SUMMARY OF CLAIMED SUBJECT MATTER (37 C.F.R. § 41.37(c)(1)(v))**

With respect to a summary of Claims 1, 19, and 20, as shown in Figure 1B, a computer-implemented method, system and computer program product for utilizing feedback in generating an optimal price are provided including generating an optimal price, utilizing a processor of a computer system, wherein the optimal price is generated by receiving a plurality of prices associated with a price-frequency mathematical distribution, a number of competitors, a business objective, and a cost associated with a good or service, via an input device coupled to the processor of the computer system (e.g. items 208, 216, 220, etc. of Figure 2, for example), and calculating the optimal price based on the prices, number of competitors, business objective, and cost associated with the good or service, utilizing the processor of the computer system. In addition, an expected result of utilizing the optimal price is identified, utilizing the processor of the computer system which is reacted to by adjusting the price-frequency mathematical distribution based on a difference between the expected result and an actual result, utilizing the processor of the computer system (e.g. Figure 1B). Furthermore, the optimal price is output for aiding in achieving the business objective, utilizing an output device coupled to the processor of the computer system. Note pages 12-14, for example.

**VI CONCISE STATEMENT OF EACH OF THE GROUNDS OF REJECTION  
PRESENTED FOR REVIEW (37 C.F.R. § 41.37(c)(1)(vi))**

Following, under each issue listed, is a concise statement setting forth the corresponding ground of rejection.

Issue # 1: The Examiner has rejected Claims 1, 3-4, 6-9, 11-13, 17-19, 21-23 and 32-40 under 35 U.S.C. 112, as being incomplete for omitting essential steps.

Issue # 2: The Examiner has rejected Claims 1, 3-4, 6-9, 11-13, 17-19, and 21-40 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which appellant regards as the invention.

Issue # 3: The Examiner has rejected Claims 1, 3-4, 6, 8-9, 11-13, 17-25, 27, 32, 29 and 40 under 35 U.S.C. 102(e) as being anticipated by Delurgio et al., U.S. Patent No. 6,553, 352.

Issue # 4: The Examiner has rejected Claims 7, 26, 28-31 and 33-38 under 35 U.S.C. 103(a) as being unpatentable over Delurgio et al., U.S. Patent No. 6,553, 352.

## VII ARGUMENTS (37 C.F.R. § 41.37(c)(1)(vii))

The claims of the groups noted below do not stand or fall together. In the present section, appellant explains why the claims of each group are believed to be separately patentable.

### Issue # 1:

The Examiner has rejected Claims 1, 3-4, 6-9, 11-13, 17-19, 21-23 and 32-40 under 35 U.S.C. 112, as being incomplete for omitting essential steps.

#### *Group 1: Claims 1, 3-4, 6-9, 11-13, 17-19, 21-23 and 32-40*

The Examiner has stated that appellant has omitted any step to further limit and describe the step of reacting. Appellant respectfully disagrees. However, in the spirit of expediting prosecution, appellant has amended such associated claims to clearly state that the reacting is accomplished "by adjusting the price-frequency mathematical distribution based on a difference between the expected result and an actual result." The foregoing rejection is thus deemed moot.

### Issue # 2:

The Examiner has rejected Claims 1, 3-4, 6-9, 11-13, 17-19, and 21-40 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which appellant regards as the invention.

#### *Group # 1: Claims 1, 3-4, 6-9, 11-13, 17-19, and 21-40*

The Examiner has stated that the recitation of reacting renders the claim indefinite because it is not clear to what the invention is reacting, or with what the invention should be reacting. Appellant respectfully asserts that such claim clearly states "reacting by adjusting the price-frequency mathematical distribution based on a

difference between the expected result and an actual result,” and therefore the reacting is accomplished by adjusting the price-frequency, as claimed.

Furthermore, the Examiner has stated that it is not clear how receiving the data (prices, number of competitors, etc.) further describe the step of generating an optimal price. Appellant again respectfully disagrees. Appellant respectfully asserts that such data is received in order to “calculat[e] the optimal price,” based on the data. Specifically, see appellant’s claimed:

“and calculating the optimal price based on the prices, number of competitors, business objective, and cost associated with the good or service, utilizing the processor of the computer system” (see Claim 1 et al.).

Issue # 3:

The Examiner has rejected Claims 1, 3-4, 6, 8-9, 11-13, 17-25, 27, 32, 29 and 40 under 35 U.S.C. 102(e) as being anticipated by Delurgio et al., U.S. Patent No. 6,553, 352.

*Group # 1: Claims 1, 3-4, 6, 8-9, 11-13, 17-25, 27, 32, 29 and 40*

With respect to each of the independent claims, the Examiner has relied on the following excerpts from Delurgio to make a prior art showing of appellant’s claimed “generating an optimal price, utilizing a processor of a computer system, wherein the optimal price is generated by receiving a plurality of prices associated with a price-frequency mathematical distribution, a number of competitors, a business objective, and a cost associated with a good or service, via an input device coupled to the processor of the computer system” (see the same or similar language in each of the independent claims).

“The present invention provides a superior technique for configuring optimization scenarios, determining a set of optimum prices corresponding to the scenarios, and displaying the set of optimum prices for multiple sets of highly related products within a product category. Contrasted with present day

optimization systems that consider only gross figures in their respective optimizations, prices according to the present invention can be optimized to maximize merchandising figures of merit (e.g., net profit) that take into account demand chain costs associated with the products.

In one embodiment, an interface is provided enabling a user to determine optimum prices of products for sale. The interface includes a scenario/results processor that enables a user to prescribe an optimization scenario, and that presents the optimum prices to the user. The optimum prices are determined by execution of the optimization scenario, where the optimum prices are determined based upon estimated product demand and calculated activity based costs. The scenario/results processor has an input/output processor and a scenario controller. The input/output processor acquires data corresponding to the optimization scenario from the user, and distributes optimization results to the user, where the data is acquired from the user over the Internet via a packet-switched protocol. The scenario controller is coupled to the input/output processor. The scenario controller controls acquisition of the data and the distribution of the optimization results in accordance with a price optimization procedure." (col. 3, lines 37-64-emphasis added)

"Examples of the types of activity based costs for products that are calculated by the activity based cost engine 235 include bag costs, checkout labor costs, distribution center inventory costs, invoicing costs, transportation costs, and receiving and stocking costs." (col. 8, lines 41-45)

"Each of the tools 304, 306, 308, 310, 312 include provisions for determining optimum lever parameters for the maximization of cost-based merchandising figures of merit such as net profit." (col. 9, lines 41-44)

Appellant respectfully asserts that the above excerpts from Delurgio simply teach that optimum prices are determined based on estimated product demand and calculated activity based costs (see emphasized excerpt above). Clearly estimated product demand and activity based costs do not meet appellant's claimed "number of competitors, a business objective, and a cost associated with a good or service".

In addition, Delurgio does not even suggest any sort of generation of an optimal price based on "a price-frequency mathematical distribution," as claimed. After a careful review of Delurgio, it is strongly noted that Delurgio is completely deficient in this regard. The Examiner should not confuse Delurgio's mention of "...estimated product demand..." as being the same as "receiving a plurality of prices associated with a price-frequency mathematical distribution" (see each of the independent

claims). As one of ordinary skill would understand, an "estimated product demand" in this context is a historical relationship of price to the number of units sold of a product by the supplier attempting to optimize price. For example, an estimated demand for the supplier attempting to optimize price could be that if the supplier prices at \$1, the supplier historically sold 10,000 units, and if the supplier prices at \$1.10, the supplier historically sold 9,500 units, and so on.

In contrast, a price-frequency mathematical distribution is a frequency count of prices (e.g. competitor prices, etc.) observed. So, for example, a price-frequency mathematical distribution may optionally be as follows: price a product 100 times at \$1, 120 times at \$1.10, 150 times at a \$1.20, and so on.

Thus, a "price-frequency mathematical distribution" is not the same as an "estimated demand." The two terms refer to completely different relationships.

Furthermore, the Examiner has completely failed to even consider appellant's claimed "calculating the optimal price based on the prices, number of competitors, business objective, and cost associated with the good or service, utilizing the processor of the computer system" (see the same or similar language in each of the independent claims).

With respect to the claimed "number of competitors," for example, the significance of this omission is clear when considering the following example. If a supplier determines the optimal price to sell their product is \$35.00 with a single competitor, the presence of twenty competitors would result in the supplier's optimal price being likely lower. Delurgio's disclosure is completely void of any language referencing the number of competitors. Thus, an allowance or a specific prior art showing of such claim language is respectfully requested.

The Examiner has also relied on Figure 6 of Delurgio to meet appellant's claimed "identifying an expected result of utilizing the optimal price" (see the same or similar language in each of the independent claims). However, such display merely depicts



currently defined scenarios corresponding to a particular client (see Col. 12, lines 39-41). Such scenarios do not include "an expected result", as claimed by appellant.

Additionally, the Examiner has also not addressed appellant's claimed "reacting by adjusting the price-frequency mathematical distribution based on a difference between the expected result and an actual result, utilizing the processor of the computer system." Again, an allowance or a specific prior art showing of such claim language is respectfully requested.

Finally, the Examiner has relied on Figure 26 of Delurgio to meet appellant's claimed "outputting an optimal price for aiding in achieving the business objective" (see the same or similar language in each of the independent claims). However, there is simply no mention of "aiding in achieving the business objective," in the context claimed by appellant.

The Examiner is reminded that a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. Of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Moreover, the identical invention must be shown in as complete detail as contained in the claim. *Richardson v. Suzuki Motor Co.* 868 F.2d 1226, 1236, 9USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claim.

This criterion has simply not been met by the Delurgio reference, and therefore the rejection should be withdrawn.

Issue # 4:

The Examiner has rejected Claims 7, 26, 28-31 and 33-38 under 35 U.S.C. 103(a) as being unpatenable over Delurgio et al., U.S. Patent No. 6,553, 352.

*Group # 1: Claims 7, 26, 28-31 and 33-38*

Such claims are deemed allowable for the reasons base Claims 1, 19 and 20 are deemed allowable.

In view of the remarks set forth hereinabove, all of the independent claims are deemed allowable, along with any claims depending therefrom.

**VIII APPENDIX OF CLAIMS (37 C.F.R. § 41.37(c)(1)(viii))**

The text of the claims involved in the appeal (along with associated status information) is set forth below:

1. (Previously Amended) A computer-implemented method for utilizing feedback in generating an optimal price, comprising:  
generating an optimal price, utilizing a processor of a computer system, wherein the optimal price is generated by receiving a plurality of prices associated with a price-frequency mathematical distribution, a number of competitors, a business objective, and a cost associated with a good or service, via an input device coupled to the processor of the computer system; and calculating the optimal price based on the prices, number of competitors, business objective, and cost associated with the good or service, utilizing the processor of the computer system;  
identifying an expected result of utilizing the optimal price, utilizing the processor of the computer system;  
reacting by adjusting the price-frequency mathematical distribution based on a difference between the expected result and an actual result, utilizing the processor of the computer system; and  
outputting the optimal price for aiding in achieving the business objective, utilizing an output device coupled to the processor of the computer system.
2. (Cancelled)
3. (Original) The method as recited in claim 1, wherein the result includes units sold.
4. (Previously Amended) The method as recited in claim 1, wherein the result includes a revenue term.
5. (Cancelled)

6. (Original) The method as recited in claim 1, wherein the result includes a gross profit.
7. (Previously Amended) The method as recited in claim 1, where in the result includes an expected win-rate calculated based on the price-frequency mathematical distribution and the number of competitors
8. (Original) The method as recited in claim 1, wherein the result includes earnings before income tax (EBIT) for each price.
9. (Original) The method as recited in claim 1, and further comprising: computing a frequency distribution of a plurality of prices.
10. (Cancelled)
11. (Previously Amended) The method as recited in claim 109, and further comprising: calculating at least one result selected from the group consisting of units sold, revenue, a gross profit, a factory utilization, a market penetration, and earnings before income tax (EBIT) for each price, wherein the at least one result is stored in a table.
12. (Original) The method as recited in claim 11, and further comprising: searching the table for the optimum price that optimizes a user-selected business objective.
13. (Previously Amended) The method as recited in claim 12, wherein the business objective is selected from the group consisting of maximizing revenue for a good or service, maximizing gross profit for the good or service, maximizing factory utilization for the good or service, achieving a desired market share for the good or service, and maximizing earnings before income tax (EBIT) for the good or service.

14.- 16. (Cancelled)

17. (Previously Amended) The method as recited in claim 1, and further comprising: if it is determined that the optimization is required, identifying a new price value by re-computing the price-frequency mathematical distribution so as to minimize the difference between the actual and expected results, wherein the operations are repeated based on the new price value.

18. (Original) The method as recited in claim 1, wherein the method is carried out utilizing a frequency distribution engine, a probability of win engine, an expected results engine, an optimization update engine, and a legacy system interface.

19. (Previously Amended) A computer program product embodied on a computer readable medium for utilizing feedback in generating an optimal price, comprising:

computer code for generating an optimal price, utilizing a processor of a computer system, wherein the optimal price is generated by receiving a plurality of prices associated with a price-frequency mathematical distribution, a number of competitors, a business objective, and a cost associated with a good or service, via an input device coupled to the processor of the computer system; and calculating the optimal price based on the prices, number of competitors, business objective, and cost associated with the good or service, utilizing the processor of the computer system;

computer code for identifying an expected result of utilizing the optimal price;

computer code for reacting by adjusting the price-frequency mathematical distribution based on a difference between the expected result and an actual result, utilizing the processor of the computer system; and

computer code for outputting the optimal price;

wherein the computer code is executed on the processor of the computer system for aiding in the achievement of the business objective.

20. (Previously Amended) A system for utilizing feedback in generating an optimal price, comprising:
- a processor for generating an optimal price, identifying an expected result of utilizing the optimal price, wherein the optimal price is generated by receiving a plurality of prices associated with a price-frequency mathematical distribution, a number of competitors, a business objective, and a cost associated with a good or service, via an input device coupled to the processor; and calculating the optimal price based on the prices, number of competitors, business objective, and cost associated with the good or service; and
  - an output device coupled to the processor, the output device outputting the optimal price;
  - wherein the computer code is executed utilizing the processor for aiding in the achievement of the business objective.
21. (Previously Presented) A method as recited in claim 1, wherein a graphical user interface is included.
22. (Previously Presented) A method as recited in claim 21, wherein the graphical user interface is adapted for inputting the business objective.
23. (Previously Presented) A method as recited in claim 21, wherein the graphical user interface is included for inputting the competitor prices and the number of competitors.
24. (Previously Presented) A method as recited in claim 20, wherein the price-frequency mathematical distribution is used to estimate the competitor prices.
25. (Previously Presented) A method as described in claim 20, wherein the price-frequency distribution is estimated using the set of competitor prices.

26. (Previously Presented) A method as described in claim 20, wherein the price-frequency mathematical distribution is converted to an expected probability of a customer purchase based on the number of competitors.
27. (Previously Presented) A method as recited in claim 20, wherein the price-frequency mathematical distribution is converted to a table of prices with a frequency of a price within the table corresponding to the price-frequency mathematical distribution.
28. (Previously Presented) A method as recited in claim 27, wherein each price, probability of a customer purchase, and cost-per-unit are used to form an income/operational statement for each member of a plurality of prices.
29. (Previously Presented) A method as recited in claim 28, wherein each income/operational statement is comprised of financial and operational terms including revenue, cost-of-goods, gross profit, EBIT, factory utilization, and market penetration.
30. (Previously Presented) A method as recited in claim 29, wherein a set of the partial income/operational statements are stored within a table.
31. (Previously Presented) A method as recited in claim 30, wherein a maximum revenue value, a maximum profit value, a plurality of factory utilization values, and the market penetration value corresponding to a market penetration goal are identified along with corresponding prices.
32. (Previously Presented) The method as described in claim 1, wherein the expected probability of a customer purchase is determined for the optimal price.
33. (Previously Presented) A method as recited in claim 1, wherein the actual probability of customer purchases is calculated by dividing the

number of customer purchase orders by the number of customer exposures.

34. (Previously Presented) A method as recited in claim 1, wherein an actual probability of customer purchase is compared with an expected probability of customer purchase.
35. (Previously Presented) A method as recited in claim 34, wherein the difference between an actual and an expected probability of customer purchase is calculated.
36. (Previously Presented) A method as recited in claim 35, wherein the updated price-frequency mathematical distribution is calculated so as to minimize a difference between an actual and expected probability of customer purchase.
37. (Previously Presented) A method as recited in claim 36, wherein the updated optimal price is calculated based on an updated price-frequency mathematical distribution.
38. (Previously Presented) The method as described in claim 37, wherein the actual winrate is calculated by dividing a sum of wins by a value for competition.
39. (Previously Presented) The method as recited in claim 1, wherein the result includes factory utilization.
40. (Previously Presented) The method as recited in claim 1, where in the result includes market penetration.



**IX APPENDIX LISTING ANY EVIDENCE RELIED ON BY THE APPELLANT  
IN THE APPEAL (37 C.F.R. § 41.37(c)(1)(ix))**

There is no such evidence.

In the event a telephone conversation would expedite the prosecution of this application, the Examiner may reach the undersigned at (408) 971-2573. For payment of any additional fees due in connection with the filing of this paper, the Commissioner is authorized to charge such fees to Deposit Account No. 50-1351 (Order No. ABE1P002).

Respectfully submitted,

By: \_\_\_\_\_

Kevin J. Zilka

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Date: 1/12/06

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/644,944	08/19/2003	John R. Abe	ABE1P002	6785
28875	7590	12/21/2005	EXAMINER	
Zilka-Kotab, PC P.O. BOX 721120 SAN JOSE, CA 95172-1120			ART UNIT	PAPER NUMBER

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10/1044, 944

EXAMINER

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Commissioner for Patents

The IDS filed 11/3/2005 has been considered.

Thomas A. Dixon  
Primary Examiner  
Art Unit: 3639

**Notification of Non-Compliant Appeal Brief  
(37 CFR 41.37)**

Application No.

10/644,944

Applicant(s)

ABE. JOHN R.

Examiner

Thomas A. Dixon

Art Unit

3639

*--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--*

The Appeal Brief filed on 25 October 2005 is defective for failure to comply with one or more provisions of 37 CFR 41.37.

To avoid dismissal of the appeal, applicant must file an amended brief or other appropriate correction (see MPEP 1205.03) within **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer. **EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136.**

1. ☒ The brief does not contain the items required under 37 CFR 41.37(c), or the items are not under the proper heading or in the proper order.
2. ☐ The brief does not contain a statement of the status of all claims. (e.g., rejected, allowed, withdrawn, objected to, canceled), or does not identify the appealed claims (37 CFR 41.37(c)(1)(iii)).
3. ☐ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 41.37(c)(1)(iv)).
4. ☒ (a) The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).
5. ☒ The brief does not contain a concise statement of each ground of rejection presented for review (37 CFR 41.37(c)(1)(vi)).
6. ☐ The brief does not present an argument under a separate heading for each ground of rejection on appeal (37 CFR 41.37(c)(1)(vii)).
7. ☐ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 41.37(c)(1)(viii)).
8. ☐ The brief does not contain copies of the evidence submitted under 37 CFR 1.130, 1.131, or 1.132 or of any other evidence entered by the examiner and relied upon by appellant in the appeal, along with a statement setting forth where in the record that evidence was entered by the examiner, as an appendix thereto (37 CFR 41.37(c)(1)(ix)).
9. ☐ The brief does not contain copies of the decisions rendered by a court or the Board in the proceeding identified in the Related Appeals and Interferences section of the brief as an appendix thereto (37 CFR 41.37(c)(1)(x)).
10. ☐ Other (including any explanation in support of the above items):

*Thomas A. Dixon*  
Thomas A. Dixon  
Primary Examiner  
Art Unit: 3639



Form 1019 (Modified)	Atty. Docket No. ABE1P002	Application No.: 10/644,944
Information Disclosure Statement By Applicant	Applicant: John R. Abe	
(Use Several Sheets if Necessary)	Filing Date: 08/19/2003	Group Art Unit: 3639

## U.S. Patent Documents

Examiner Initial	No.	Patent No.	Date	Patentee	Class	Sub-class	Filing Date
	A						
	B						
	C						
	D						
	E						
	F						
	G						
	H						
	I						
	J						
	K						

## Foreign Patent or Published Foreign Patent Application

Examiner Initial	No.	Document No.	Publication Date	Country or Patent Office	Class	Sub-class	Translation	
	L						Yes	No
	M							
	N							
	O							
	P							

## Other Documents

Examiner Initial	No.	Author, Title, Date, Place (e.g. Journal) of Publication
<i>DA</i>	R	Copy of Office Action Summary from application no. 10/652,640 which was mailed on 08/11/2005.
	S	
	T	
Examiner	Thomas A. <i>DA</i>	
	Date Considered	12/13/05

Examiner: Initial citation considered. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant.